

1 L. LIN WOOD, P.C.  
2 L. Lin Wood (admitted *pro hac vice*)  
3 [lwood@linwoodlaw.com](mailto:lwood@linwoodlaw.com)  
4 Nicole J. Wade (admitted *pro hac vice*)  
5 [nwade@linwoodlaw.com](mailto:nwade@linwoodlaw.com)  
6 Jonathan D. Grunberg (admitted *pro hac vice*)  
7 [jgrunberg@linwoodlaw.com](mailto:jgrunberg@linwoodlaw.com)  
8 G. Taylor Wilson (admitted *pro hac vice*)  
9 [twilson@linwoodlaw.com](mailto:twilson@linwoodlaw.com)  
10 1180 West Peachtree Street, Ste. 2040  
11 Atlanta, Georgia 30309  
12 404-891-1402; 404-506-9111 (fax)

10 WEISBART SPRINGER HAYES, LLP  
11 Matt C. Wood (admitted *pro hac vice*)  
12 [mwood@wshllp.com](mailto:mwood@wshllp.com)  
13 212 Lavaca Street, Ste. 200  
14 Austin, TX 78701  
15 512-652-5780  
16 512-682-2074 (fax)

CHATHAM LAW GROUP  
Robert Christopher Chatham  
[chris@chathamfirm.com](mailto:chris@chathamfirm.com)  
CA State Bar No. 240972  
3109 W. Temple St.  
Los Angeles, CA 90026  
213-277-1800

15 Attorneys for Plaintiff VERNON UNSWORTH

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 VERNON UNSWORTH,  
19

20 Plaintiff,

21 v.

22 ELON MUSK,  
23

24 Defendant.

Case No. 2:18-cv-08048-SVW (JC)

**PLAINTIFF'S STATEMENT OF  
GENUINE DISPUTES IN  
OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Hearing Date: October 28, 2019  
Time: 1:30 PM  
Place: 10A  
Complaint Filed: Sept. 17, 2018  
Trial Date: Dec. 3, 2019

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Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56-2, Plaintiff Vernon Unsworth respectfully submits this Statement of Genuine Disputes in Opposition to Defendant's Motion for Summary Judgment, inclusive of his response to Defendant's Statement of Uncontroverted Facts and Plaintiff's Statement of Additional Material Facts Precluding Summary Judgment<sup>1</sup>:

**PLAINTIFF'S STATEMENT OF ADDITIONAL  
MATERIAL FACTS PRECLUDING SUMMARY JUDGMENT**

<b><u>Plaintiff's Statement of Additional Facts</u></b>	<b><u>Supporting Evidence</u></b>
<b>A. <u>Musk's False and Defamatory Accusations</u></b>	
<p>1. On July 15, 2018, Musk tweeted as follows:</p> <p><b>“Never saw this British expat guy who lives in Thailand (sus) at any point when we were in the caves. Only people in sight were the Thai navy/army guys, who were great. Thai navy seals escorted us in – total opposite of wanting us to leave.</b></p> <p>Water level was actually very low &amp; still (not flowing) – you could literally have swum to Cave 5 with no gear, which is obv how the kids got in.</p> <p>If not true, then I challenge this dude to show final rescue video. Huge credit to pump &amp; generate</p>	Wilson Decl. Ex. 14.

<sup>1</sup> Plaintiff's Response to Defendant's Statement of Uncontroverted Facts begins on page 73. For organizational purposes and due to the amount of information contained in certain of Unsworth's individual responses to Musk's Statement of Uncontroverted Facts, Unsworth submits this Statement of Additional Material Facts to assist the Court's orderly review of evidentiary materials. This was necessitated by Musk's principal reliance on vague, conclusory declarations rather than the actual factual record developed in this case through deposition and document discovery, which declarations contradict the factual record significantly.

1 team. Unsung heroes here.

2 You know what, don't bother showing the  
3 video. We will make one of the mini-sub/pod  
4 going all the way to Cave 5 no problemo. **Sorry**  
5 **pedo guy**, you really did ask for it.”

6 (Emphasis added)

7 2. On July 15, 2018, another Twitter user  
8 tweeted at Musk as follows:

9 “Oh, sorry, he's calling the guy who found the  
10 children **a pedo**. Real classy, @elonmusk.”

11 (Emphasis added)

12 3. On July 15, 2018, Musk replied to that  
13 Twitter user's tweet, stating as follows:

14 “Bet ya a signed dollar it's true”

15 4. On July 17, 2018, Musk received an e-mail  
16 from Sam Teller, his then “chief of staff,”  
17 recommending that Musk deliver an apology e-  
18 mail to his company and employees based upon  
19 the feedback of several “trusted” and “respected”  
20 members of Musk's team, the beginning of which  
21 stated as follows:

22 “Have solicited feedback on these points ...  
23 from Gwynne, Shallman, Saltsman, Todd, Sarah,  
24 Deepak, Antonio, Anthony Romero, Davis, Elissa  
25 and Omead – all very positive and agree that this,  
26 combined with a break from Twitter, sets you back  
27 on the right path internally and externally. You of  
28

Wilson Decl. Ex. 15.

Wilson Decl. Ex. 15.

Wilson Decl. Ex. 16; *id.*  
Ex. 1 (Musk Dep. 80:1-  
91:24).

course need to put it in your own words. Just need an honest acknowledgment of the recent past combined with a genuine apology and inspiring look to the future. Everyone will love and respect you more for openly admitting the mistake and showing how much you care about your employees and the company missions.

##

I understand that my recent behavior has probably embarrassed you and I'm sorry.

I apologize to Vernon Unsworth and am reaching out to him to personally convey this, as well as my deep appreciation for his work in saving the kids. ..."

5. Recognizing that there were internal concerns about the stock price following his July 15 tweets, Musk did not follow the advice to issue an internal apology, stating:

"After sleeping on this, I'm not happy about the suggested approach. It would have been particularly foolish and craven of my to do it last night, right after a share drop, as my apology would simply have been dismissed as a disingenuous and cowardly attempt to restore the stock price."

Wilson Decl. Ex. 16; *id.* Ex. 1 (Musk Dep. 93:13-94:4 ("Certainly there were, I think, many expressions of concern" and "the nature of the concerns" was the "share price").)

6. On or about the early morning of July 18, 2018, Musk issued the following tweets:

Wilson Decl. Ex. 17.

1 “As this well-written article suggests, my words  
2 were spoken in anger after Unsworth said several  
3 untruths & suggested I engage in a sexual act with  
4 the mini-sub, which had been built as an act of  
5 kindness & according to the specifications of the  
6 dive team leader.

7 Nonetheless, his actions against me do not  
8 justify my actions against him, and for that I  
9 apologize to Unsworth and to the companies I  
10 represent as leader. The fault is mine and mine  
11 alone.”

12 7. On or about the morning of August 28,  
13 2018, another Twitter user tweeted at Musk,  
14 stating:

15 “One other thing, elon. your dedication to facts  
16 and truth would have been wonderful if applied to  
17 that time when you called someone **a pedo.**”  
18 (Emphasis added)

Wilson Decl. Ex. 18.

19 8. At 9:41 am on August 28, 2018, Musk  
20 replied to that Twitter user’s tweet, stating as  
21 follows:

22 “You don’t think it’s strange he hasn’t sued  
23 me? He was offered free legal services. And you  
24 call yourself @yoda...”

Wilson Decl. Ex. 18.

25 9. On August 29, 2018, Mr. Ryan Mac at  
26 BuzzFeed News e-mailed Musk stating “We’re  
27 reporting a story out about you receiving a letter  
28

Wilson Decl. Ex. 19.

1	from a lawyer representing British diver Vernon	
2	Unsworth,” and requesting comment “[g]iven the	
3	twitter conversation yesterday.”	
4	10. On August 29, 2018, Musk sent to Mr. Mac	Wilson Decl. Ex. 19.
5	a response e-mail stating as follows:	
6	“Have you actually done any research at all?	
7	For example, you incorrectly state that he is a	
8	diver, which shows that you know essentially	
9	nothing and have not even bothered to research	
10	basic facts.”	
11	11. On August 29-30, 2018, Mr. Mac	Wilson Decl. Ex. 19.
12	responded, asking “But do you have any comment	
13	on the letter your [sic] received?” and followed up	
14	with another e-mail stating “Hey Elon, just wanted	
15	to make sure I did my due diligence to research	
16	basic facts and follow up here.”	
17	12. On August 30, 2018, at 6:43 pm, Musk	Wilson Decl. Ex. 19.
18	responded to Mr. Mac as follows:	
19	“Off the record	
20	I suggest that you call people you know in	
21	Thailand, <b>find out what’s really going on and</b>	
22	<b>stop defending child rapists, you fucking</b>	
23	<b>asshole.</b> He’s an old, single white guy from	
24	England who’s been traveling to or living in	
25	Thailand for 30 to 40 years, mostly Pattaya Beach,	
26	until moving to Chiang Rai for a child bride who	
27	was about 12 years old at the time. There’s only	
28		

one reason people go to Pattaya Beach. It isn't where you'd go for caves, but it is where you'd go for something else. Chiang Rai is renowned for child sex-trafficking.

He may claim to know how to cave dive, but he wasn't on the cave dive rescue team and most of the actual dive team refused to hand out with him. I wonder why...

<https://www.google.com/search?q=chiang+rai+child+trafficking&ie=UTF-8&oe=UTF-8&hl=en-us&client=safari>

As for this alleged threat of a lawsuit, which magically appeared when I raised the issue (nothing was sent or raised beforehand), **I fucking hope he sues me.**"

(Emphasis added)

13. As Musk has himself acknowledged under oath, all of his claims regarding Unsworth – that he is a pedophile, that he is a child rapist, that he married a 12-year-old child bride, that he is an English expat who has been traveling to or living in Thailand for 30-40 years, and that he has *ever been* to Pattaya, are unequivocally false.

Unsworth met his significant other, Tik, in London in February 2011 by chance at a coffee shop. Tik was 32 years old at the time. Unsworth's first trip to Thailand was in July 2011,

Wilson Decl. Ex. 3 (Unsworth Dep. 69:2-8, 70:3-4, 75:18-76:3, 77:10-24, 262:24-263:4); *id.* Ex. 20 (Unsworth Rog. No. 13); *id.* Ex. 5 (Tik Dep. 7:13-17, 10:5-25, 11:22-12:19, 32:4-15); *id.* Ex. 4 (Vanessa Dep. 32:14-21); *id.* Ex. 1 (Musk Dep. 62:17-20



and he has never been to Pattaya Beach.

That being the case, Musk also described the result as being a “tragic outcome,” and when asked was is “more heinous than an adult who would take sexual advantage of a minor,” Musk responded “murdering people ... serial killers, cannibals, yeah, that kind of thing.”

(“these things subsequently turned out not to be correct”), 192:15-19 (“That is correct” that the “investigator from all appearances now you know was probably a con man that took your money”), 254:12-22 (“the investigator was not being truthful”), 253:9-14, 104:4-105:3.)

#### **B. Musk’s Negligence and Actual Malice**

14. As of the time Musk tweeted his “sus,” “pedo guy,” and “bet ya a signed dollar it’s true,” tweets on July 15, 2018, Musk admitted he knew “essentially nothing” about Unsworth other than having performed a google search of him and Chiang Rai, which he discovered via Google was the sex trafficking capital of the world.

- Q. You had not done any basic research on Vernon Unsworth on or before July the 15th, other than to google his name, right?

- A. Yes. Oh, yeah. ...

- Q. Yeah. You essentially knew nothing about him, right?

Wilson Decl. Ex. 1  
(Musk Dep. 24:10-25:21, 42:4-43:8, 47:18-49:17, 184:19-185:7, 219:25-220:15).

- A. Yes.

\*\*\*

- Q. What did you learn about Mr. Unsworth from the time you first saw his name, either on Google alert on Twitter –

- A. Sure.

- Q. – and the time that you started tweeting about him on July the 15th?

- I literally just saw this article.... But I did not really know much of anything of this guy except that he had gone on TV with a major news organization, and had been – had attacked me for no reason ... and you know, to be totally frank, looked sort of like a pedo guy, you know. And then I was like – googled him, oh, he was like, lives in Thailand. Okay, that's pretty suspicious. English expat, doesn't seem to be – have been on the dive team, in a very dodgy part of the world.

\*\*\*

- A. ...So this is one extra thing that I remember was just googling Chiang Rai and reading the *Straits Times* article about how Chiang Rai, which is where Mr. Unsworth is from, or was still living, or near there, and how it being a child sex trafficking capital of the world.

- Q. When did you do that research?

- A. I would not call it research. It was a

1 google –

2 • Q. So when do you the search?

3 • A. It was shortly before the tweet. I typed  
4 in his name in Google and his name came up – not  
5 his name. I typed in Chiang Rai I should say.

6 \*\*\*

7 • Q. So when you went – when it was  
8 brought [to] your attention that Mr. Unsworth had  
9 given this interview, and as you perceived it at  
10 least, made these rude attacks and told lies about  
11 you, you didn't know who in the world he was, did  
12 you?

13 • A. No. I thought – I thought this – I did not  
14 know who he was, so I searched – did the search,  
15 Google search, and that's the – and from what I  
16 could tell this guy, at least at the time, it seemed  
17 like he didn't have anything to do with the rescue  
18 and had not been on the dive team where they  
19 risked their life. And so my impression was that  
20 he was just some – at the time, just some random  
21 expat that the media had found to interview. And  
22 so here was some random, some creepy expat guy  
23 living in Thailand attacking me for no reason.

24 • Q. And that was the sole – that was the full  
25 extent of your knowledge about Vernon Unsworth  
26 when you tweeted about him on the 15th of July,  
27 true?  
28

1	<ul style="list-style-type: none"> <li>• A. Yes.</li> </ul>	
2	<ul style="list-style-type: none"> <li>• Q. Basically what you had learned on</li> </ul>	
3	Google?	
4	<ul style="list-style-type: none"> <li>• A. Yeah, this is all in the space of maybe an</li> </ul>	
5	hour or so; maybe an hour. Less than an hour.	
6	***	
7	<ul style="list-style-type: none"> <li>• Q. You heard and saw the interview. You</li> </ul>	
8	did some searching on Google for Vernon	
9	Unsworth and Chiang Rai, and then you tweeted	
10	about him, including referring to him as a “pedo	
11	guy,” true?	
12	<ul style="list-style-type: none"> <li>• A. Yes.</li> </ul>	
13	<ul style="list-style-type: none"> <li>• Q. And that was the sum total of your</li> </ul>	
14	knowledge of Vernon Unsworth at the time you	
15	published those tweets on July 15, true?	
16	<ul style="list-style-type: none"> <li>• A. To the best of my recollection, yes.</li> </ul>	
17	***	
18	<ul style="list-style-type: none"> <li>• Q. So you didn’t have any information</li> </ul>	
19	about who he was, what he had done, if anything.	
20	You didn’t look into who Vernon Unsworth was	
21	except to take a look at Google search, right?	
22	<ul style="list-style-type: none"> <li>• A. Yes.</li> </ul>	
23		
24	15. Musk similarly expressly acknowledged that	Wilson Decl. Ex. 1
25	when he e-mailed Mr. Mac on August 30, 2018, he	(Musk Dep. 173:23-
26	was subjectively unaware as to whether his	175:16).
27	statements were true or false:	
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1	<ul style="list-style-type: none"> <li>• Q. Why did you want the information that</li> </ul>	
2	you sent to Mr. Mac to be off the record?	
3	<ul style="list-style-type: none"> <li>• A. Because I was not sure that it was</li> </ul>	
4	accurate. ...	
5	<ul style="list-style-type: none"> <li>• Q. So but at the time you wrote this</li> </ul>	
6	information to Mr. Mac, you tell me you didn't	
7	know whether it was true or not, right?	
8	<ul style="list-style-type: none"> <li>• A. Yes. I specifically said try to find out if</li> </ul>	
9	this is true. ...	
10	<ul style="list-style-type: none"> <li>• Q. But sir, the point is, you didn't know</li> </ul>	
11	whether the investigator's information was true or	
12	not or had been verified, right? Isn't that right?	
13	<ul style="list-style-type: none"> <li>• A. That's right. That's why I said "Please</li> </ul>	
14	go and investigate.	
15	16. All references by Howard and Birchall to	Wilson Decl. Ex. 2
16	Unsworth's "wife" in Thailand referred to Tik.	(Birchall Dep. 99:16-19);
17		<i>id.</i> Ex. 21; <i>id.</i> Ex. 22; <i>id.</i>
18		Ex. 23; <i>id.</i> Ex. 24.
19	17. Musk testified at his deposition that the	Wilson Decl. Ex. 1
20	"investigator [Howard] who merely was, in	(Musk Dep. 198:11-23).
21	retrospect, just taking us for a ride ... claimed that	
22	Unsworth had a 12-year-old bride. ... That is my	
23	recollection of what Jared [Birchall] told me, yes."	
24	18. Birchall, the long-time manager of Musk's	Wilson Decl. Ex. 2
25	family office, Excession, LLC, expressly refuted	(Birchall Dep. 242:19-
26	Musk's above sworn testimony, stating	243:17, 248:23-249:16).
27	unequivocally that Birchall never told Musk that	
28		

Unsworth had a child bride and that Howard never told Birchall that either, and that Howard was clear that the earliest Unsworth may have married Tik was at age 18 or 19:

- Q. So you're telling me that Mr. Howard told you they were married when she was how old?

- A. 18 or 19.

- Q. Not that they met when she was 18 or 19, but that they were married when she was 18 or 19, true?

- A. That's correct. True.

\*\*\*

- Q. Nobody ever told him [Musk] – not you, not Mr. Howard, nobody – that in fact Tik and Vernon were married when she was 12 years old, true?

- A. That is true.

\*\*\*

- Q. And you didn't communicate that Vernon Unsworth married Tik when she was 12 years old, did you?

- A. No.

- Q. And Mr. Howard never communicated to you at any time, that in fact, Tik and Vernon were married when she was 12 years old, right?

- A. Correct.

19. Birchall acknowledged that "[s]omeone

Wilson Decl. Ex. 2

1 2 3 4 5	being married at 18 does not suggest they are a child rapist in and of itself, correct” and that it is true “if you first meet ... at age 18 or 19, it is impossible that you got married seven years earlier than when you met.”	(Birchall Dep. 246:9-14, 150:4-17).
6 7 8 9 10 11 12 13	20. Birchall acknowledged that it is “true” “if you go back and assume that [Tik] was seven years – that they had met seven years before they were married at age 18 or 19, that would be evidence that they <b>met</b> each other – <b>met</b> each other when she was 11 or 12 years old,” but that to “meet someone is not to have sexual intercourse with them.” (Emphasis added)	Wilson Decl. Ex. 2 (Birchall Dep. 246:15-23).
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>21. Birchall and Musk also each confirmed under oath that nobody at any time told Musk that Unsworth is a “child rapist”:</p> <p>Birchall testified as follows:</p> <ul style="list-style-type: none"> <li>• Q. You didn’t communicate to Elon Musk that Vernon Unsworth’s a child rapist, right?</li> <li>• A. That’s right.</li> <li>• Q. And you didn’t communicate to Elon Musk that Mr. Howard said that Vernon was a child rapist, did you?</li> <li>• A. No, I did not communicate that.</li> </ul> <p style="text-align: center;">***</p> <ul style="list-style-type: none"> <li>• Q. You’d never communicated to Elon Musk that Mr. Unsworth was a child rapist, true?</li> </ul>	Wilson Decl. Ex. 1 (Musk Dep. 176:4-14); <i>id.</i> Ex. 2 (Birchall Dep. 147:2-9, 238:12-239:5, 248:23-249:16).

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<ul style="list-style-type: none"> <li>• A. Never used that term.</li> <li>• Q. So the answer is “Yes. True, Mr. Wood?”</li> <li>• A. Yes.</li> </ul> <p style="text-align: center;">***</p> <ul style="list-style-type: none"> <li>• Q. Which meant it had to go to Elon Musk from you, right?</li> <li>• A. Yes.</li> <li>• Q. Did you ever refer to Mr. Unsworth as a child rapist?</li> <li>• A. I have never used that term.</li> <li>• Q. Neither did Mr. Howard, true?</li> <li>• A. True.</li> </ul> <p>Musk testified as follows:</p> <ul style="list-style-type: none"> <li>• Q. Who told you that Mr. Unsworth was a child rapist? Did Jared [Birchall] tell you that?</li> <li>• A. No. I didn’t say that he [Mr. Unsworth] was. I think I said we need to find out if he is.</li> <li>• Q. Why did you use the term “child rapist”? Who had used that term with you that made you repeat it in your email to Mr. Mac?</li> <li>• A. Well, I think anyone who is – if somebody is sleeping with someone who is 12 years old, I would say that person is a child rapist.</li> </ul>	
<p>22. In fact, on August 24, 2018, Howard reported via written e-mail that “The Target</p>	<p>Wilson Decl. Ex. 21.</p>



[Unsworth] and Woranun [Tik] have been married for 7 years, 28yrs gap between them both,” indicating that Unsworth and Tik must have been married in 2011.

23. On August 27, 2018, Birchall demonstrated via written e-mail his and Musk’s subjective belief that Unsworth and Tik married in 2011, stating **“When did he marry his wife in Thailand? 2011?”** (Emphasis added).

Wilson Decl. Ex. 22.

24. On August 27, 2018, Howard answered Birchall’s above e-mail in writing and reported that he “kn[e]w as fact” that Unsworth met Tik in 2008 and was “in the process of verifying” that Tik is 30 years old and that Unsworth met her when she was 18 or 19 years old:

Wilson Decl. Ex. 22;  
*compare id.* Ex. 21.

“Jim,

Further information will be forthcoming as the team continues with the tasking:

**GREEN** what we know as fact.

**ORANGE** what we are in the process of verifying

\*\*\*

- When did he marry his wife in Thailand? 2011? **Target met his wife in 2008 in her role as Vice Presi[d]ent of the local commune. ... She was introduced to the target by a mutual English friend....**

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<ul style="list-style-type: none"> <li>• How did he meet her? <b>See above</b></li> <li>• What was her age when they met? <b>The target is 63 years old. His wife we believe is 30 which would have put her at 18/19 when they first met....”</b></li> </ul> <p>(Emphasis in original).</p> <p>Thus, it was reported as fact by August 27, 2018, that Unsworth met Tik in 2008.</p> <p>Thus, based on the statement on August 27 that Unsworth was believed to be 63 and on August 24 that there was a 28 year gap between he and Tik, Tik would have been 35 years old.</p> <p>Thus, based on the statement on August 24 that Unsworth and Tik had been “married for 7yrs,” Tik would have been either 23 (if 30 years old as stated on August 27) or 28 when she married Unsworth (if 35 years old as suggested on August 24).</p>	
<p>25. On August 30, 2018, at 11:04 am, Pacific Daylight Time (GMT-07:00), approximately 7 hours and 39 minutes prior to Musk’s “child rapist” and “child bride” e-mail to Mr. Mac, Howard provided a written preliminary report that reiterated the August 27 information nearly verbatim:</p> <p>“Mr Unsworth met his wife in 2008 in her role</p>	<p>Wilson Decl. Ex. 23; <i>compare id.</i> Ex. 22; <i>id.</i> Ex. 19.</p>

<p>as a secretary to the Chief Executive of the local commune. ... Mr Unsworth wife was introduced to him by a mutual English friend. ... Mr. Unsworth is 63 years old. His wife we believe is 30 (<b>we will confirm this in the next 48hrs</b>) which would have put her at 18/19 when they first met.”</p> <p>(Emphasis in original)</p>	
<p>26. Following the publication of the BuzzFeed “child rapist” and “child bride” article on September 4, 2018, Howard e-mailed to Birchall in material part as follows:</p> <p>“Jared, I would like to state the following. <b>At no time have have [sic] I reported that the target is a child rapist...</b>”</p> <p>(Emphasis added)</p>	Wilson Decl. Ex. 24.
<p>27. Birchall responded directly to this e-mail on September 5, 2018, stating in full:</p> <p><b>“There is no confusion where this is concerned. You have not reported this and I have not communicated it either.</b> I understand your concern about self sabotage. A concern of mine as well.” (Emphasis added)</p> <p>Birchall confirmed in his deposition that neither he nor Howard communicated to Musk that Unsworth is a “child rapist.”</p>	Wilson Decl. Ex. 24; <i>id.</i> Ex. 2 (Birchall Dep. 238:12-239:5).
<p>28. As can be seen at the top of the August 27, 2018, e-mail report from Howard, Birchall</p>	Wilson Decl. Ex. 22.

1 forwarded the message to unspecified individual(s)  
 2 at 12:45 a.m. on September 6, 2018. In his  
 3 deposition, Birchall testified that the empty “to” in  
 4 his forward on the early morning of September 6,  
 5 2018, is “because those were emails that I  
 6 forwarded to the other counsel” and when asked  
 7 “how did the ‘to’ disappear,” he answered “I don’t  
 8 know. I don’t know.”

9  
 10 29. Later the same day following the forwarded  
 11 message to counsel, Birchall did not wait for a  
 12 response to his e-mail and instead sent another e-  
 13 mail on September 6, 2018, and changed his  
 14 position. While again confirming that Howard  
 15 never relayed that Unsworth was a child rapist or  
 16 had married a child bride, he attempted to explain  
 17 Musk’s statements to BuzzFeed in a manner  
 18 entirely inconsistent with the August 24, August  
 19 27, and August 30 written reports from Howard, as  
 20 well as his e-mail immediately preceding, but  
 21 which effectively sums up Musk’s actual malice  
 22 defense in this case, stating in material part as  
 23 follows:

24 “Also, as you may expect, I have spent time  
 25 over the last 24 hours compiling the information  
 26 you’ve provided. Not to beat a dead horse, but to  
 27 briefly revisit the point below, you never did report  
 28

Wilson Decl. Ex. 24.

that the target is a child rapist. However you undoubtedly understand where the principal was drawing this conclusion. You reported *in multiple phone conversations* that the age of the target's girlfriend (believed to be wife at the time) would have put her in her teens when they 'married' and that she was quoted in a Thai news article saying they *first met* 7 years prior to that – which would have made her a very young teenager at the time. Some (all?) of this information has now proven to be wrong. They aren't married and her age is unconfirmed. I also haven't seen the Thai article you referenced. So while I agree that the comments by the principal were *ill advised*, you can understand that using the data you provided would have allowed him to draw this conclusion without you explicitly reporting it as fact.”

(Emphasis added).

30. Howard denied Birchall's tortured explanation the same day, September 6, 2018, stating in material part:

“... I made the assumption based on what was reported back to me that if her age is in-fact 30 and not 40 and that she has been married (not legally) but in a religious context for 7 years plus we also know that she was dating Unsworth for at least a further 3 years prior to this then *she would have*

Wilson Decl. Ex. 24.

1 *been in her late teenage years **when they met**. I*  
 2 *believe I told you that I thought this would have*  
 3 *been about 19. **There is a big difference between***  
 4 ***19 and 29 I agree, and an even bigger leap to***  
 5 ***being a child rapist. I do not know how anyone***  
 6 ***could come to that conclusion as neither of have***  
 7 ***us ever mentioned children or rape in our***  
 8 ***conversations. ...”***

9 (Emphasis added).

10 31. Though undisputed that Howard never  
 11 reported in writing or via telephone that Unsworth  
 12 was a child rapist or married a child bride,  
 13 Birchall’s next e-mail the same day brings home  
 14 the stark contrast between *met* and *married*, as  
 15 well as admits what he was allegedly told by  
 16 phone, stating in material part as follows:

17 “... Please understand that as of this moment  
 18 much of what you have told us can’t be verified.  
 19 Our request for actual documentation is to confirm  
 20 that we are being given legitimate information. ...  
 21 Regarding your follow up comment, *we were told*  
 22 *numerous times that **they were ‘married’ (or***  
 23 ***formed a relationship) in her late teens (you said***  
 24 ***18), but that she was quoted in a newspaper saying***  
 25 ***they met 7 years prior. ... Because based on that***  
 26 ***original narrative she would have actually been a***  
 27 ***child/young teenager **when they first met.*****  
 28

Wilson Decl. Ex. 24.

1	(Emphasis added)	
2	32. Birchall acknowledged, among other	Wilson Decl. Ex. 2
3	admissions set forth above that Howard never at	(Birchall Dep. 91:9-
4	any time reported in writing or orally that	92:6, 150:4-17, 222:17-
5	Unsworth had married a child bride or was a child	224:3, 246:2-22, 249:17-
6	rapist:	260:6).
7	• Q. So you were clear in telling Musk	
8	“Howard tells me that <i>they met</i> when Tik was 12	
9	or 13,” true?	
10	• A. Yes.	
11	• Q. He didn’t – Mr. Howard didn’t tell you	
12	that Mr. Unsworth married Tik at age 12 or 13, did	
13	he?	
14	• A. Not that I recall, no. ...	
15	• Q. I meant to say Mr. Howard did not tell	
16	you that Mr. Unsworth had some type of a sexual	
17	relationship with Tik when she was 12 or 13. He	
18	never told you that, did he?	
19	• A. No.	
20	***	
21	• Q. And we can agree that if you first meet,	
22	for purposes of this question, at age 18 or 19, it is	
23	impossible that you got married seven years earlier	
24	than when you met, true?	
25	• A. That is true.	
26	***	
27	• Q. So if she’s 18 or 19, and they are	
28		

1 married – which would assume sexual intercourse,  
2 right?

3 • A. Most likely.

4 • Q. He's not – she's not a 12-year-old child  
5 bride, true?

6 • A. True.

7 • Q. And that – that fact of marriage at 18  
8 does not in any way support that he was a child  
9 rapist, true?

10 • A. Someone being married at 18 does not  
11 suggest they are a child rapist in and of itself,  
12 correct.

13 • Q. And if you go back and assume that she  
14 was seven years – that they had met seven years  
15 before they were married at age 18 or 19, that  
16 would be evidence that they met each other – met  
17 each other when she was 11 or 12 years old, true?

18 • A. True.

19 • Q. To meet someone is not to have sexual  
20 intercourse with them, is it?

21 • A. Not – no.

22 \*\*\*

23 • Q. Where – I want to make sure I  
24 understand. Where do you disagree?

25 • A. So I –

26 • Q. Where does it break down there?

27 • A. So I – I – I would – there is some  
28



1 support for the first half of that statement –

2 • Q. What support?

3 • A. – about the child bride.

4 • Q. What support?

5 • A. What you just outlined would support  
6 not being a child bride –

7 • Q. 12-year-old child bride.

8 • A. Exactly. So that's what I'm saying.  
9 You're correct in that regard. ...

10 • Q. All I want to know is where is my logic  
11 wrong? Where did Elon Musk –

12 • A. I just finished saying your logic wasn't  
13 wrong. ... About the child bride. ... The child  
14 bride logic was not wrong. ... I'm saying the child  
15 rapist side of it is incorrect. That there was a lot of  
16 information that would have led one to draw that  
17 conclusion.

18 • Q. What information? ... I want to find  
19 where you got any information, what information  
20 it was, that would have in any way supported as  
21 true that Vernon Unsworth was a child rapist. Just  
22 tell me what it is.

23 • A. Yeah. So if you go back and read a  
24 number of things that – that Howard wrote, and if  
25 you knew all of what was said and what was  
26 communicated, you would know that we had an  
27 investigator telling us that – that he spent – or [1]  
28

that he met a young Thai girl in a – in Thailand, known for what it’s – you know, for pedophilia and all that stuff, [2] that he spent time with her as a young girl, and [3] that he had frequented other establishments in Pattaya that were known for those same things. And so there was – those were – those are some of the few reasons that would have caused that conclusion to be drawn.

33. Birchall acknowledged that *none of those things were verified* at any time<sup>2</sup>:

- Q. When did he meet Tik in Thailand? What did you learn?
- A. It depends at what point you’re asking me that. ... I mean, to be honest there were numerous answers given over time to where for me to clearly state this is exactly when he met her – it honestly is not clear in my head, because the answer evolved over time. ... So the answer to that question evolved over time. And there were different answers.

\*\*\*

- As of August 30, 2018, the day of the BuzzFeed e-mails, Birchall texted Howard “Just need to make sure the team in Thailand keeps digging. **Creatively, extensively, and when possible, aggressively,**” and testified that he told

Wilson Decl. Ex. 2 (Birchall Dep. 89:1-25, 133:17-24, 173:21-184:12, 201:13-202:1, 232:25-233:2); *compare id.* Ex. 25; *id.* Ex. 23; *id.* Ex. 24.

<sup>2</sup> None of these statements remotely justify Musk’s “pedo guy,” “child rapist” or “child bride” accusations.

1 him to do this “[b]ecause he had provided a lot of  
2 information at that point, and that information at  
3 times varied ...” (Emphasis added)

4 \*\*\*

5 • The August 30 written report contained the  
6 only written information provided by Howard  
7 regarding Unsworth’s alleged travel to Pattaya  
8 prior to the August 30 BuzzFeed e-mails, and  
9 stated: “**If this is the case** that Mr Unsworth  
10 choose to live in Pattaya Beach ... then it would be  
11 a strong indicator as to his lifestyle interests. **If we**  
12 **can establish** that Mr Unsworth was a regular  
13 visitor to this part of Thailand ...” (Emphasis  
14 added)

15 • The August 30 written report also stated  
16 “**Can we confirm** that Mr Unsworth was a  
17 frequent visitor to Pattaya – This can be  
18 established by checking old visa applications ...”  
19 (Emphasis added)

20 • Birchall acknowledge such in his deposition,  
21 stating “He did state that they were in the process  
22 of verifying that.”

23 \*\*\*

24 • As of September 3, 2018, there was still no  
25 verification of Unsworth’s alleged travel to  
26 Pattaya, which Howard stating via text: “Pattaya  
27 will take some time probably 7 days. ...”  
28

\*\*\*

• As of September 4, 2018, Howard “hadn’t gotten [w]hat he thought he needed from Pattaya yet,” as evidenced by Birchall’s testimony and Howard’s September 4, 2018, e-mail stating “I appreciate that you need quick results. I am very confident that we will get what we need from Pattaya.”

• As of September 4, 2018, Birchall demonstrated his awareness of this in writing, stating “Can you confirm the hotel names in Pattaya?” to which Howard responded “our goal is to get evidence from the penthouse which is obviously a big win. I’ll keep you updated.”

\*\*\*

• As of September 17, 2018, Birchall confirmed via e-mail that he was unaware of the source of Unsworth’s travel: “Also, what was the information source that suggested Unsworth has been going to Thailand since the 80’s?”

\*\*\*

• As of September 18, 2018, Birchall confirmed via e-mail that he had never received documentation of Unsworth’s travel: “You mentioned several days ago that you would be sitting down with your embassy contact to get documented proof of Unsworth’s travel over those

6 years that you indicated he spent time in Pattaya. Did that happen? This is an important piece of verification.”

\*\*\*

- As of September 20, 2018, Birchall had still never received verification: “You’ve made some pretty specific claims that contradict his legal filing. But at this point we have nothing to confirm any of them. We need something, anything that can support your claims.”

\*\*\*

- As of October 2, 2018, Birchall confirmed via text to Howard: “go back and review the information you’ve provided aside from the initial info. **You’ve just about given us nothing. And you have given us exactly nothing verified.**” (Emphasis added)

\*\*\*

- Birchall never conveyed to Musk that Unsworth’s alleged travel to Pattaya was confirmed, admitting that he “didn’t tell [Musk] they had have established that he lived in Pattaya Beach,” because “I wouldn’t have said that they had proof of that. I would have said they believed that.”

34. As a result of the conflicting information and lack of documentation, Musk and Birchall

Wilson Decl. Ex. 2  
(Birchall Dep. 136:6-

were both concerned “about whether [they] were getting the truth from Mr. Howard”:

- Q. So if you really wanted – you had concerns about whether you were getting the truth from Mr. Howard, you tell me, right?

- A. Correct.

- Q. Mr. Musk had that same concern, true?

- A. True.

- Q. And you-all had had that concern ever since his data being provided to you started to change, right?

- A. That’s right.

- Q. Like when it went from 12 or 13 prior to 27<sup>th</sup>, to 18 or 19 on the 27<sup>th</sup>, right?

- A. Yes, though it continued to waffle even after the 27<sup>th</sup> –

138:5).

35. By design, Birchall and Musk never communicated in writing regarding the Howard investigation, with Birchall testifying that “we both came to that conclusion” independently.

Wilson Decl. Ex. 2  
(Birchall Dep. 195:8-12).

36. Without any “child bride” or “child rapist” – and instead only denials – from Howard in writing, Birchall testified that “it’s important to note that there are numerous phone calls between each of these correspondence where he [Howard] is much more affirmative in his beliefs of her [Tik’s] age and of Unsworth’s activities and of his time spent

Wilson Decl. Ex. 2  
(Birchall Dep. 169:1-171:4).

in Pattaya Beach.”

37. Irrespective of whether there was information conveyed by phone that is not contained in any of Howard’s written reports, Birchall confirmed that he would promptly and fully apprise Musk when received information from Howard, including, among other things, that Unsworth met Tik when she was 18/19 years old, and he would have shared with Musk the “serious discrepancy” in Tik’s age when it “was shared with him” on August 28 and before August 30:

- Q. Did he want you to share the information that you were learning with him? Mr. Musk?

- A. Yes.

- Q. And you would have made sure that you provided him accurate information about Mr. Howard’s investigation, true?

- A. True.

- Q. You would not in any way have provided information from Mr. Howard – that you obtained from Mr. Howard – to Mr. Musk that would be misleading, true?

- A. True.

- Q. You wanted to give him a complete report on the information you were receiving from Mr. Howard on any and all significant issues that were being investigated, true?

Wilson Decl. Ex. 2  
(Birchall Dep. 20:21-22:12, 105:3-108:10, 138:17-141:7, 163:17-164:7, 190:6-17, 256:13-260:6).

- A. True.

\*\*\*

• Q. So you now you've got conflicting information from Mr. Howard. Earlier he's told you 12 or 13. Now he's telling you 18 to 19, true?

- A. True.

• Q. And he's telling you that that's – he's in the process of verifying that, right? It's unverified?

- A. Correct. ...

• Q. Right. **Yes, you would have told him "Look, he's told me 12 to 13. But now I've got a report from him saying 18 to 19 that he's trying to verify," right?**

- A. **Likely, yes.** (Emphasis added)

\*\*\*

• But like that. He was going back and forth between 12 and 18 and 19, right?

- A. There was some back and forth.

• Q. And you told Mr. Musk there was discrepancies and there was back and forth and it was not the same, true?

• A. Yes. I communicated what was communicated to me. ...

• Q. ...You don't – you haven't told me that you did, but what you have told me is that you told Elon Musk before August the 30th –



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- A. There was some vacillation.
  - Q. – that you were getting 12, and you were getting 18 or 19, and her date – her age had not been verified. You told that to Elon –
  - A. There was some truth –
  - Q. Excuse me. You told that to Elon Musk before he wrote BuzzFeed on the 30th of August, true?
  - A. Yes.
- \*\*\*
- Q. And at least one of those conversations, if not more, had occurred when you got the information saying 18 or 19. You told Mr. Musk without delay “We’re getting different information now, Elon,” right?
  - A. Yes.
  - Q. And that would have been reported to him within a day?
  - A. Most likely, yes.
  - Q. By the 28th he knew there was a problem in the dates that you were getting on when they met and when the got married, right?
  - A. You say a “problem,” I mean ...
  - Q. Well, the date –
  - A. Yeah, he was waffling.
  - Q. – a serious discrepancy?
  - A. He was waffling as far as when marriage

1 versus met, yeah. Yes, he was waffling back and  
2 forth there.

3 • Q. And not just waffling a little bit. You  
4 recognized that there was a serious discrepancy in  
5 what he was telling you according to you on when  
6 they met in terms of Tik's age, and you knew that  
7 on the 27th and 28th, and you discussed it with Mr.  
8 Musk, true?

9 • A. I would have shared the information that  
10 was shared with me.

11 • Q. On the 28th when you got it?

12 • A. Most likely, yes.

13 \*\*\*

14 • Q. You would have informed Mr. Musk of  
15 that information?

16 • A. Likely, yes.

17 • Q. Relatively soon after you received it?

18 • A. Typically within 24 hours was the  
19 cadence.

20 • Q. And sooner if Mr. Musk's schedule  
21 permitted. Because you said you wanted to get the  
22 information from Mr. Howard to him along the  
23 way, but on his schedule as soon as possible, true?

24 • A. Sure, if possible.

25 • Q. And generally, that would have meant  
26 clearly no longer than 24 hours?

27 • A. Generally, yes.  
28

1	<ul style="list-style-type: none"> <li>• Q. Generally sooner, though, true?</li> </ul>	
2	<ul style="list-style-type: none"> <li>• A. If possible.</li> </ul>	
3	38. Musk's statement of uncontroverted facts	Musk Statement of Facts
4	admits that "[w]ithin a day of receiving the	¶¶ 56-57.
5	information [on August 27], Mr. Birchall orally	
6	reported to Mr. Musk Mr. Howard's description of	
7	a Thai news article that quoted Mr. Unsworth's	
8	Thai wife <i>and reported that Mr. Unsworth</i>	
9	<i>married his wife when she was 18 or 19 years old,</i>	
10	<i>but that they met seven years earlier, which</i>	
11	<i>would imply that she was eleven or twelve years</i>	
12	<i>old at the time."</i> (Emphasis added)	
13	39. On September 1, 2018, Howard provided an	Wilson Decl. Ex. 26.
14	additional written report confirming, among other	
15	things, when Unsworth met Tik and her age,	
16	stating in material part as follows:	
17	<ul style="list-style-type: none"> <li>• Tik's date of birth as "18<sup>th</sup> November 1988"</li> </ul>	
18	<ul style="list-style-type: none"> <li>• "The reason that he has chosen to live in</li> </ul>	
19	Chiang Rai is because of the extensive local cave	
20	networks. Chiang Rai has plenty of interesting	
21	caves, especially in Tam [sic] Luang."	
22	<ul style="list-style-type: none"> <li>• "They both <b>met</b> each other in England <b>11</b></li> </ul>	
23	<b>years ago.</b> Tik had a summer vacation and visited	
24	some student friends there. A friend of hers	
25	introduced Tik to Vernon. <b>That was the</b>	
26	<b>beginning of their relationship."</b> (Emphasis	
27	added)	
28		

1	<ul style="list-style-type: none"> <li>• “During that time she met Vernon she was</li> </ul>	
2	<b>about 19 years old ...”</b> (Emphasis added)	
3	<ul style="list-style-type: none"> <li>• “DOB 18/11/1988 Age 30”</li> </ul>	
4	40. Musk did not disclose the information from	Wilson Decl. Ex. 19.
5	Howard’s September 1, 2018, report in follow-up	
6	correspondence with Mr. Mac on September 4,	
7	2018, instead stating:	
8	<ul style="list-style-type: none"> <li>• “Off the record I suggest you ask Unsworth</li> </ul>	
9	to describe his whole ~30 year history of visiting	
10	Thailand. What was he doing in Pattaya Beach for	
11	the better part of a decade when there are no caves	
12	of note in the area?”	
13	<ul style="list-style-type: none"> <li>• “Get lost, you creep”</li> </ul>	
14		
15	<b>C. <u>An Ends Oriented Investigation Run by a Self-Admitted “Novice”</u></b>	
16	<b><u>and Marred by Extraordinary Tactics</u></b>	
17	41. On July 17, 2018, two days after Musk	Wilson Decl. Ex. 27.
18	tweeted “pedo guy,” Howard e-mailed Musk and	
19	his associates, stating in relevant part:	
20	“Dear Elon, You may wish to dig deep and look	
21	into Unsworth past to prepare for his defamation	
22	claim. No smoke without fire!” and “Like Elon I	
23	think that Mr. Unsworth has skeletons in his	
24	cupboard.”	
25	42. Birchall engaged Howard on August 15,	Wilson Decl. Ex. 2
26	2018, via Musk’s family office, Excession, LLC,	
27	“at the request and the desire of Mr. Musk,” and	
28		(Birchall Dep. 82:25-83:10, 76:4-7); <i>id.</i> Ex.

1	acknowledged that he “knew when he came to Mr.	28.
2	Musk that he was suggesting that he had some dirt	
3	on Vernon Unsworth[.]”	
4	43. Birchall testified that he considers himself	Wilson Decl. Ex. 2
5	an “inexperienced novice,” with respect to	(Birchall Dep. 19:5-19,
6	conducting investigations, and that he “was a	50:16-51:7).
7	novice being asked to do something that I’d never	
8	done before, and didn’t know what it entailed ...”	
9	44. In his “first investigative role or a role in an	Wilson Decl. Ex. 2
10	investigation,” Birchall’s due diligence into	(Birchall Dep. 72:11-
11	Howard was limited to googling his name and the	76:7).
12	name of his company and a discussion with	
13	Howard about his experience. He did not verify	
14	that Howard’s claimed experience in the British	
15	Special Forces or his work for other high net worth	
16	individuals was real.	
17	According to Birchall, “there would have	
18	maybe been a slightly different process if someone	
19	said go out and identify the best investigator in the	
20	world to go and find information in Thailand,” and	
21	he considered his due diligence process to be	
22	“somewhat rudimentary, you know, big high-level	
23	vetting process. He came to us, and the need to	
24	reach out to him was brought to me by someone	
25	internal. It wasn’t an outward investigative search	
26	for the best in the world. It was someone who	
27	came to us, so that manner in which he came to us	
28		

probably affected the amount or type of research that was done.”

According to Musk,

45. A google search result performed for August 15, 2018, or before for “James Howard Jupiter” reveals that the first result on the first page is a November 3, 2016, article headlined “Businessman stole £426,000 from company’s accounts despite being given ‘numerous second chances.’” The article begins with, among other things, the statement “A BUSINESSMAN has been jailed after stealing more than £400,000 from his company’s accounts. James Milton Howard-Higgins was the co-founder of Orchid Maritime Security Ltd based in Poole,” and includes a quote from a detective stating “James Howard-Higgins systematically stole from his business partner over a sustained period of time despite being caught in the act and given numerous second chances. He selfishly abused his position of trust and I hope the sentence given will act as a reminder that anyone convicted of fraud offences will be dealt with robustly by the courts.”

Similarly, on October 3, 2019, BuzzFeed News published an article entitled “Elon Musk Hired a Convicted Felon To Investigate The Cave Rescuer Who Is Now Suing Him,” reporting, *inter alia*, that

Wilson Decl. Exs. 29-31.

Howard “served 18 months of his three-year sentence in October 2016 for stealing more than £426,000 (\$525,000) from his company,” and that “Howard-Higgins also recently violated the terms of his parole. Musk’s private investigator is back in jail serving the remainder of his three-year sentence.”

46. After hiring a man sentenced for fraud to conduct an investigation that the investigator solicited with the suggestion of pre-determined results, Musk testified, among other things:

- Q. The investigator from all appearances now you know was probably a con man that took your money?

- A. That is correct. That is my impression at this point. ... I don’t know what all due diligence Jared [Birchall] did.

\*\*\*

- A. The investigator who merely was, in retrospect, just taking us for a ride ...

Wilson Decl. Ex. 1  
(Musk Dep. 192:15-193:5, 198:11-17).

47. Birchall established a fake name, “James Brickhouse,” and a fake e-mail address to correspond with Howard. According to Birchall:

- “I used, I guess, an assumed name when I corresponded with Mr. Howard. I was being asked to – to do something that was very much out of my wheelhouse, and to help gather information about

Wilson Decl. Ex. 2  
(Birchall Dep. 12:9-14:6, 16:19-17:8, 18:24-19:19).

1 a matter in an area that had things that I – I just felt  
2 I would be better – it would be better not to have  
3 my personal name, both for me as well as Mr.  
4 Musk, to not have my personal name attached to  
5 that. ... So when it comes to being asked to go and  
6 facilitate, you know, communication from  
7 someone who is gathering information about a  
8 legal matter or about a seemingly seedy topic. I –  
9 you know, I work in finance. I have a family.  
10 This isn't what I do, and my preference was to not  
11 be personally tied to something of that nature.”

12 • “I was also preventing a – you know,  
13 someone's ability to just forward an email  
14 exchange and easily tie that to myself or Elon or  
15 someone, you know. So that was just another  
16 reason behind the anonymity on that.”

17 • It was “true” that Birchall was “very  
18 conscious that [he] did not want him to know [his]  
19 real name.”

20 48. On August 24, 2018, as the investigation  
21 had only just begun, he stated:

22 “Thanks for this. Do we have more info about  
23 the timeline when he originally went to Thailand?  
24 Was his current wife the girl he finally settled on  
25 after a period of ‘exploring’ the world of  
26 underaged Thai girls? Can we get a firm  
27 confirmation that they met while she was a  
28

Wilson Decl. Ex. 21.



1 minor?"

2 In doing so, Birchall also established his  
3 awareness that Unsworth and Tik did not marry  
4 "while she was a minor," as of August 24, 2018.

5 49. On August 25, 2018, Birchall followed up  
6 on his above request after Howard responded to  
7 the above that he "will enquire and confirm,"  
8 stating:

9 "Also, for successful confirmation of nefarious  
10 behavior there is an additional \$10k bonus.  
11 Timing is important as you know. Preferably in  
12 the next 36-48 hours."

13 Birchall also testified that "[t]ypically, yeah,"  
14 he needed Musk's authority to pay Howard and  
15 that though he was uncertain, "[i]t's possible" that  
16 Musk knew about the offer of the \$10,000 bonus.

17 50. Birchall confirmed that the \$10,000 bonus  
18 was never paid:

19 • Q. Did you pay him the \$10,000?  
20 • A. No, I didn't.  
21 • Q. Because he didn't give you confirmation  
22 of nefarious behavior, did he?

23 • A. Correct

24 \*\*\*

25 • Q. Had not gotten – he had not earned his  
26 bonus, and his information, as you said on 10/2,  
27 had not ever been verified. You've given me  
28

Wilson Decl. Ex. 21; *id.*  
Ex. 2 (Birchall Dep.  
78:10-15, 228:6-19).

Wilson Decl. Ex. 2  
(Birchall Dep. 228:2-  
229:5, 230:13-21, 271:7-  
12).

1	absolutely nothing verified. True?	
2	<ul style="list-style-type: none"> <li>• A. True.</li> </ul>	
3	51. On August 27, 2018, Birchall e-mailed a list	Wilson Decl. Ex. 22; <i>id.</i> Ex. 2 (Birchall Dep. 84:10-85:1).
4	of questions to Howard, stating:	
5	“Clearly we’d like the information now. ... We	
6	believe there are planned attacks in the media	
7	and/or a lawsuit that are imminent. ... Some of the	
8	specific questions that would be good to answer	
9	are:	
10	<ul style="list-style-type: none"> <li>• When did he move to Thailand? 2011? ...</li> </ul>	
11	<ul style="list-style-type: none"> <li>• When did he marry his wife in Thailand?</li> </ul>	
12	2011?	
13	<ul style="list-style-type: none"> <li>• When did he meet his wife in Thailand?</li> </ul>	
14	<ul style="list-style-type: none"> <li>• How did he meet her?</li> </ul>	
15	<ul style="list-style-type: none"> <li>• What was her age when they met?</li> </ul>	
16	<ul style="list-style-type: none"> <li>• Was she the 10th teenage girl he met before</li> </ul>	
17	he decided to settle?	
18	If you are able to carefully do a ‘press’	Wilson Decl. Ex. 22.
19	interview with him or her – or both, then I say let’s	
20	use any and all creative methods possible. ...”	
21	Birchall also testified “I’m sure, yes,” that “Mr.	
22	Musk had input into the questions that [he] sent,”	
23	and that the questions were a “collaboration,” and	
24	that “Yes,” the questions were drawn from his	
25	“discussions with Mr. Musk that he wanted	
26	answers to[.]”	
27	52. In response to this list of questions, Howard	
28		

1 sent the previously mentioned August 27, 2018, e-  
 2 mail report stating as verified fact that Unsworth  
 3 “met his wife in 2008 in her role as Vice President  
 4 of the local commune,” that she “was introduced to  
 5 the target by a mutual English friend,” and that  
 6 “[h]is wife we believe is 30 which would have put  
 7 her at 18/19 when they first met.”

8 53. At 9:41 am on August 28, 2018, just one  
 9 day removed from receiving the August 27, 2018,  
 10 Howard e-mail stating as fact that Unsworth met  
 11 Tik in 2008 when she was believed to be 18/19,  
 12 and four days removed from the August 24 e-mail  
 13 stating Unsworth and Tik had been married for  
 14 seven years, Musk published his “don’t you think  
 15 it’s strange he hasn’t sued me yet” tweet.

Wilson Decl. Ex. 18.

16 54. Musk began receiving media inquiries  
 17 regarding his tweets almost immediately, including  
 18 one on August 28, 2018, at 10:24 am requesting  
 19 comment, to which Tesla’s internal PR person,  
 20 Dave Arnold, responded that he was already  
 21 “starting to get some inquiries like this.”

Wilson Decl. Ex. 32.

22 55. Contemporaneously with Musk’s 9:41 am  
 23 August 28 tweet and his receipt of media inquiries  
 24 in response, at 9:48 am (seven minutes after Musk  
 25 tweeted publicly on the issue to a member of the  
 26 press), and still only one day removed from  
 27 receiving hard confirmation that Unsworth did not  
 28

Wilson Decl. Ex. 33.

marry Tik when she was a child bride, Musk and Birchall began a calculated effort to plant stories in the press, as shown in Birchall's e-mail to Howard as follows:

"We would like you to immediately move forward with 'leaking' this information to the UK press. Obviously must be done very carefully.

The line of thinking at this point is as follows:

- Thailand is the world capital of pedophilia
- This man has frequented Thailand since the 80's – eventually leading to his divorce to his wife in the UK.

- While the guise of cave exploration is creative, there are amazing and extensive caving systems in many places throughout the world – not just in Thailand. Even the most ardent supporter of Thai food doesn't eat Thai food every day.

- He eventually woman [sic] 30 years his minor – whom he met while she was a teenager.

- He had been going to Thailand for decades before marrying her. She wasn't the first girl he met – and definitely not the first teenager he interacted with.

Share the facts and as you said, that should be enough for a story. But we'd like to make this happen immediately."

56. Between August 28-29, Birchall

Wilson Decl. Ex. 25.

1       texted with Howard confirming his authority to  
2       conduct this press campaign and suggesting that it  
3       expand to Australia:

4             • Birchall: "What is the timeline?"

5             • Howard: "Jim timeline is ASAP ... It has to  
6       appear organic & not contrived. Priority is to  
7       diver the story away from the principal and let the  
8       UK tabloids develop there [sic] story."

9             • Birchall: "Would be ideal to have more  
10      than one publisher receive the info."

11            • Howard: "100 %[,] Plan is to reach out  
12      indirectly to ¾ different newspapers & print &  
13      online. ... This will begin in 90 mins & then be  
14      pushed out today. The difficulties will be getting  
15      the editors to ok that line of enquiry & for them to  
16      feel this is a better story that [sic] the principles  
17      [sic] activities."

18            • Howard: "Jim example of what we are  
19      doing with all the daily newspapers and Sunday  
20      papers"

21            • Birchall: "So nothing out yet has your  
22      info?"

23            • Howard: "Daily Mail are now interested  
24      through Mick Smith. Thats [sic] the paper that  
25      will have the biggest impact"

26            • Birchall: "Ok, good ... Please let me know  
27      when you have word of a story with your narrative  
28

1 being published. One other thought, maybe we  
2 consider the Australian press as well. The UK  
3 press may be prone to protect one of their own.”

4 Birchall’s form e-mail was sent as a template by  
5 Howard to, among others, The Sun, from an email  
6 address called “bangkokjohn” and to others from  
7 an email addressed called “bangkokhilton.”

8 57. Birchall confirmed that Musk was  
9 likely involved in forming the information for  
10 these stories in the UK and Australian press, and  
11 confirmed that he and Musk authorized and  
12 encouraged Howard to plant those stories:

13 • The “we” in the above August 28, 2019, e-  
14 mail is Birchall and Musk

15 • Birchall testified that “Yeah,” in response to  
16 being asked whether “you wanted that story to be  
17 published, and Mr. Musk wanted it to be published  
18 too. True?”

19 • Birchall stated “I believe so, yes,” in  
20 response to being asked whether “Mr. Musk wanted  
21 this information leaked to the UK press”

22 • Birchall stated “Yes,” in response to being  
23 asked “you said ‘We agree to it,’ and Musk said  
24 that ‘I agree to it being leaked,’ right?”

25 • Birchall testified “Yes,” in response to being  
26 asked that “you are saying [in the August 28 email  
27 to Howard above] that you and Mr. Musk did want  
28

Wilson Decl. Ex. 2  
(Birchall Dep. 109:18-  
110:6, 111:18-24,  
114:23-115:21, 119:1-  
120:25, 125:13-126:3,  
129:10-13, 163-64,  
273:4-24).

1 these leaks to happen immediately, true?”

2 • In response to being asked whether he was  
3 “[h]oping to get a story about Vernon Unsworth,”  
4 Birchall testified that “wherever the cards would  
5 fall in investigative work, gathering information –  
6 but yes, something that would be – would have  
7 people question the motive for being in Thailand”  
8 and that “pedophilia” “would be among the things  
9 that people would question ...”

10 • Birchall testified that “many people who  
11 seek to discredit him [Musk] ... and my instinct to  
12 protect was that we needed to somehow balance,  
13 because there was a clear imbalance in what was in  
14 the media.”

15 • Birchall testified “Yes” in response to being  
16 asked whether the “fact of the matter is you and  
17 Elon Musk wanted this information contained in  
18 Exhibit 66 and forwarded to the Sun as reflected on  
19 Exhibit 67, you and Mr. Musk wanted this  
20 information to be public; to be written about by the  
21 media, true?”

22 • Birchall testified that it was “Likely” that  
23 “Mr. Musk would have known that you were  
24 suggesting the avenue of also publishing in  
25 Australia,” too.

26 • And, Birchall testified that it’s “true” that  
27 the information planted in the press was made  
28

1	“without any disclosure that it was coming from	
2	Elon Musk or one of his investigators.”	
3		
4	58. Contemporaneously with the August 28-29,	Wilson Decl. Ex. 19.
5	2018, text messages evidencing an effort to plaintiff	
6	stories in the UK and Australian press, Musk	
7	received an e-mail from Mr. Ryan Mac at	
8	BuzzFeed at 7:40 am on August 29, 2018,	
9	requesting comment on “the Twitter conversation	
10	yesterday.”	
11	59. Musk responded to Mr. Mac within an hour,	Wilson Decl. Ex. 19.
12	at 8:38 a.m., querying: “Have you actually done	
13	any research at all? ...”	
14	60. On August 30, 2018, Birchall began	Wilson Decl. Ex. 25.
15	inquiring with Howard by text regarding Mr.	
16	Mac’s article, and asking Howard to “verify when	
17	(if) he actually engaged council [sic],” and	
18	followed up later that day asking whether it was	
19	“[c]onfirmed that he [Unsworth’s UK counsel	
20	Mark Stephens] has been retained by Unsworth,”	
21	and Howard openly claimed that he “can find out	
22	[l]ater this morning I know another partner at the	
23	law firm [c]an make a social call & make a soft	
24	enquiry.”	
25	61. Howard’s August 30, 2018, report stated	Wilson Decl. Ex. 23.
26	specifically that “Mr Unsworth is a member of	
27	Verulam Golf club ... and he will be playing Golf	
28		



there in the coming weeks. The investigation team will be looking to integrate itself with him either as part of a playing four ball or in the clubhouse bar. This will be to establish how far along the legal route he has gone and what the strategy is. ... Unless instructed, we are not running mobile and foot surveillance on Mr. Unsworth during his visit in the UK.”

62. On September 3, 2018, Howard delivered texts to Birchall stating “Target meeting Mark Stephens today at 1600 to put libel plan into place. Confirmed the UK Office of Howard Kennedy will run the libel action through Mark Stephens,” and purporting to send a picture of Unsworth.

63. In response to being asked whether he “put the brakes on [Howard] when you realized he was trying to surveil matters regarding Mr. Unsworth and his lawyers? Did you ever do that?”, Birchall replied “No. The assumption of any surveillance that was being done was that it was following any guideline that proper investigations should follow.” This, despite Howard’s September 1 report stating “I have a source within the company who may be able to reveal some of the strategy and timelines.”

64. When the investigation was closing, on October 2, 2018, Birchall texted Howard: “go

Wilson Decl. Ex. 25.

Wilson Decl. Ex. 2  
(Birchall Dep. 161:1-162:24); *id.* Ex. 26.

Wilson Decl. Ex. 25.

back and review the information you've provided aside from the initial info. You've just about given us nothing. And you have given exactly nothing verified."

**D. Musk Intended, Authorized, Encouraged, and Foresaw the Republication of His Defamatory Accusations to BuzzFeed**

65. On September 4, 2018, Musk authored multiple e-mails to his outside public relations contact assessing his "off the record" e-mail and stating in material part as follows:

- "Yes, this is extremely bad. I didn't expect Buzzfeed to publish an off the record email. My intent was to have them investigate and come to their own conclusions, *not publish my email directly. Still, I'm a fucking idiot.*"
- "Completely agree. I was told a lot of bad things this guy did and was upset that no one cared to investigate, so responded *in what I felt* was off the record. In the past, Buzzfeed has respected emails prefaced with 'off the record', but this time they did not. *It was still one of the dumbest things I've ever done* and this distraction couldn't come at a worse time."

(Emphasis added).

Wilson Decl. Ex. 34.

66. On June 21, 2018, Mr. Mac published an article entitled "Elon Musk Has Always Been At War With The Media," which stated, in part, as

Wilson Decl. Ex. 35  
(Mac. Decl. Ex. A).

1 follows:

- 2 • “No one lectures Elon Musk.”
- 3 • “That fiery interaction eventually leaked to
- 4 the press and ricocheted around the internet as
- 5 further evidence that Musk was losing it.”
- 6 • “Yet taken together with his other antics and
- 7 problems of 2018, the shocking behavior was
- 8 viewed by some pundits as a prime example of
- 9 Musk cracking under pressure. But the thing is:
- 10 None of this is new for Musk.”
- 11 • “He has always been the architect of his
- 12 own image and has long run roughshod over
- 13 journalists and his own communications team
- 14 alike.”
- 15 • “What we are seeing is less a crack in his
- 16 well-being than his façade. It is Elon Musk
- 17 unbound.”
- 18 • “In response to questions from BuzzFeed
- 19 News, a Tesla spokesperson said, ‘This sounds like
- 20 a very exciting story and we can’t wait to read it.
- 21 Buzzfeed is the best!’”
- 22 • “In reaction, Musk has gone on the
- 23 offensive, lashing out in public at his perceived
- 24 enemies – largely in the press.”
- 25 • “On Twitter, he has attacked journalists,
- 26 accused his critics in the media of being a Big Oil
- 27 conspiracy, and threatened to start a public ranking
- 28

1 of news organizations ironically named after a  
2 former Soviet Union propaganda publication.”

3 • “Combined, these events prompted  
4 speculation about whether or not the billionaire  
5 CEO was losing control and invited inevitable  
6 comparisons to another wealthy leader with a  
7 predawn Twitter habit.”

8 • “Musk has long raged in private at perceived  
9 enemies, especially in the media. His short temper  
10 and outbursts have long been legend inside Tesla  
11 and SpaceX headquarters, according to multiple  
12 current and former employees. ‘It doesn’t strike  
13 me as some drastic change in his personality,’ said  
14 on former employee. ‘The people who are saying  
15 this is how he’s always been are correct,’ said  
16 another.”

17 • “Depending on who you ask, he’s an icon,  
18 an environmental champion, or an attention-  
19 hungry micromanager ...”

20 • “Musk’s recent public outbursts may have  
21 less to do with a desire to be a media critic and  
22 more to do with a long-standing business strategy,  
23 where he’s leveraged his popularity for press  
24 coverage for years.”

25 • “Former employees remember him being  
26 easily angered and ‘extraordinarily vindictive,’ no  
27 matter how small the outlet or tempered the  
28

critique.”

- ““He’ll read an obscure critical post by, like, some Belgian blogger at 3 in the morning and he’ll wake up people on the comms team and demand this person be crushed,’ one former employee said.”

67. Birchall acknowledged that it was “likely [Musk] would have seen the headline at minimum” of Mr. Mac’s June 21, 2018, article, Arnold confirmed “he expected this article to be either reviewed by Mr. Musk or for someone in his various communications teams to have brought it to his attention,” and in response to being asked whether he has “a great deal of journalistic respect for BuzzFeed,” Musk testified “[n]ot particularly,” which has been true “[s]ince I heard of them,” while insisting that “their journalistic standards are another matter, because even these sort of very populist things, even the TMZs of the world have journalistic standards.”

Wilson Decl. Ex. 2 (Birchall Dep. 68:25-70:8); *id.* Ex. 1 (Musk Dep. 168:16-170:21); *id.* Ex. 7 (Arnold Dep. 76:10-77:9); *see also id.* Ex. 36.

68. Prior to Musk’s August 30, 2018, e-mail to Mr. Mac at BuzzFeed News, BuzzFeed News had already published at least four articles concerning Musk’s involvement in the cave rescue and his accusations against Unsworth:

- On July 10, 2018, BuzzFeed News published an article entitled “People Really Aren’t

Wilson Decl. Exs. 37-40; *see also id.* Ex. 35 (Mac. Decl. Ex. B).

Here for Elon Musk’s Submarine.”

- On July 15, 2018, BuzzFeed News published an article entitled “Elon Musk Didn’t Help Save The Thai Boys. Now He’s Attacking Someone Who Did.”

- On August 28, 2018, BuzzFeed News published an article authored by Mr. Mac entitled “Elon Musk Has Revisited His Baseless Pedophile Claims.”

- On August 29, 2018, BuzzFeed News published an article authored by Mr. Mac entitled “The Cave Rescuer Elon Musk Called a ‘Pedo’ Has Lawyered Up And Is Preparing A Libel Claim.”

69. Musk published his “don’t you think it’s strange he hasn’t sued me” tweet at 9:41 am on August 28, 2018, “in response to a tweet from TechCrunch reporter Drew Olanoff.”

Wilson Decl. Ex. 18;  
Musk Decl. ¶ 38.

70. Beginning at 9:48 am on August 28, 2018, and continuing through August 29, 2018, Musk and Birchall were actively seeking to plant stories in the UK and Australian media suggesting Unsworth is a pedophile, with Birchall instructing Howard in writing, among other things, “We would like you to immediately move forward with ‘leaking’ this information to the UK press.”

Wilson Decl. Ex. 2  
(Birchall Dep. 109:18-110:6, 111:18-24, 114:23-115:21, 119:1-120:25, 125:13-126:3, 129:10-13, 163-64, 273:4-24); *id.* Ex. 33; *id.* Ex. 25.

1 71. Birchall confirmed that Musk authorized  
 2 Howard to plant the stories in the press, and that  
 3 the purpose of doing so was to “balance” the  
 4 media reporting on this issue:

5 • The “we” in the above August 28, 2019, e-  
 6 mail refers to Birchall and Musk

7 • Birchall testified “Yeah,” in response to  
 8 being asked whether “you wanted that story to be  
 9 published, and Musk wanted it to be published too.  
 10 True?”

11 • Birchall stated “I believe so, yes,” in  
 12 response to being asked whether “Mr. Musk  
 13 wanted this information leaked to the UK press”

14 • Birchall stated “Yes,” in response to being  
 15 asked “you said ‘We agree to it,’ and Musk said  
 16 that ‘I agree to it being leaked,’ right?”

17 • Birchall testified “Yes,” in response to being  
 18 asked that “you are saying [in the August 28 email  
 19 to Howard above] that you and Mr. Musk did want  
 20 these leaks to happen immediately, true?”

21 • In response to being asked whether he was  
 22 “[h]oping to get a story about Vernon Unsworth,”  
 23 Birchall testified that “wherever the cards would  
 24 fall in investigative work, gathering information –  
 25 but yes, something that would be – would have  
 26 people question the motive for being in Thailand”  
 27 and that “pedophilia” “would be among the things  
 28

Wilson Decl. Ex. 33; *id.*  
 Ex. 25; *id.* Ex. 2 (Birchall  
 Dep. 109:18-110:6,  
 111:18-24, 114:23-  
 115:21, 119:1-120:25,  
 125:13-126:3, 129:10-13,  
 163-64, 273:4-24).

1 that people would question ...”

2 • Birchall testified that there are “many  
3 people who seek to discredit him [Musk] ... and  
4 my instinct to protect was that we needed to  
5 somehow balance, because there was a clear  
6 imbalance in what was in the media.”

7 • Birchall testified “Yes” in response to being  
8 asked whether the “fact of the matter is you and  
9 Elon Musk wanted this information contained in  
10 Exhibit 66 and forwarded to the Sun as reflected  
11 on Exhibit 67, you and Mr. Musk wanted this  
12 information to be public; to be written about by the  
13 media, true?”

14 • Birchall testified that it was “Likely” that  
15 “Mr. Musk would have known that you were  
16 suggesting the avenue of also publishing in  
17 Australia”

18 • And, Birchall testified that it’s “true” that  
19 the information planted in the press was made  
20 “without any disclosure that it was coming from  
21 Elon Musk or one of his investigators.”

22 72. Musk was responding to a written request  
23 for comment when he published to Mr. Mac his  
24 “child bride” and “child rapist” e-mail on August  
25 30, 2018, e-mail.

Wilson Decl. Ex. 19.

26 73. Musk unilaterally designated his August 30,  
27 2018, “child bride” and “child rapist” e-mail as  
28

Wilson Decl. Ex. 19; *id.*  
Ex. 35 (Mac. Decl. ¶ 5);



1 2 3 4 5	“off the record” without prior agreement with BuzzFeed News or Mr. Mac, and Musk did not ask Mr. Mac before he provided the information whether he would agree that it would be off the record.	<i>id.</i> Ex. 1 (Musk Dep. 181:12-16).
6 7 8 9 10 11 12	74. When Musk was told by Mr. Mac prior to the publication of BuzzFeed’s September 4, 2018, article entitled “In A New Email, Elon Musk Accused A Cave Rescuer Of Being A ‘Child Rapist’ And Said He ‘Hopes’ There’s A Lawsuit,” Musk responded in material part as follows: “If you want to publish off the record comments and destroy your journalistic credibility, that’s up to you.”	Wilson Decl. Ex. 19.
13 14 15 16 17 18 19 20 21	75. Sam Teller, Musk’s chief of staff and the person principally responsible for his public relations efforts, acknowledged that when Musk stated “that’s up to you,” he “left it up to Mr. Mac whether to publish it or not under the threat, as he saw it, that if he did so, it would destroy Mr. Mac’s journalistic credibility.”	Wilson Decl. Ex. 6 (Teller Dep. 11:17-12:7, 27:2-18, 334:13-25).
22 23 24 25 26 27 28	76. Musk testified that he expected and intended that the accusations he made would be published whether true or false: • Q: ... I’ve gotten this information from the investigator. I don’t know whether it’s true or not. But you wanted Ryan Mac to investigate it. Is that	Wilson Decl. Ex. 1 (Musk Dep. 189:7-190:6).

1 a fair characterization of your testimony?

2 • A. Yeah.

3 • Q. And if he discovered that it was true,  
4 you *fully would have expected him to publish that,*  
5 *true?* (Emphasis added)

6 • A. I have expected him to, yes, take some  
7 action if – if this – you know, Unsworth was up to  
8 no good, to bring that to light.

9 • Q. Publish it and let folks know, right?

10 • A. If true.

11 • Q. That's what you thought when you sent  
12 it to him?

13 • A. Yes.

14 • Q. And if he did not find any evidence to  
15 support it, did you likewise expect that he would  
16 report that. That he had looked into it and could  
17 not find any substantiation?

18 • A. Yes.

19 77. Musk's August 30, 2018, "child rapist" and  
20 "child bride" referred to Mr. Mac in the first  
21 sentence as a "fucking asshole."

Wilson Decl. Ex. 19.

22 78. Musk testified that he did not know  
23 anything about Mr. Mac other than "[t]here was  
24 this email correspondence, obviously. Apart from  
25 that, no."

Wilson Decl. Ex. 1  
(Musk Dep. 167:5-  
169:25).

26 79. Musk acknowledges that what he does is  
27 generally news and that he does not trust the  
28

Wilson Decl. Ex. 1  
(Musk. Dep. 320:4-

1 2 3 4 5	media: “I mean, it’s a torrent of media. And I don’t know. The media, to be frank, is – especially over the last few years, has caused me to lose some faith in humanity.”	321:19, 85:2-9); <i>see also</i> Ex. 41 (Musk tweet stating “The media has earned this mistrust”).
6 7 8 9 10 11	80. Birchall similarly acknowledged Musk’s newsworthiness: “Yeah, I mean, in general you have someone who has disrupted many industries, and [who] as a result has many people who seek to discredit him, and therefore any data point, good or bad, is blown extremely out of proportion in the media ...”	Wilson Decl. Ex. 2 (Birchall Dep. 120:5-12).
12 13 14 15 16	81. Dave Arnold, Tesla’s global communications director at the relevant time, confirmed that “[i]t was up to [BuzzFeed] if they want to publish” the email” that Musk unilaterally labeled off the record.	Wilson Decl. Ex. 7 (Arnold Dep. 10:7-15, 102:5-14).
17 18 19 20 21 22 23 24 25	82. Arnold confirmed that Musk: was “taking a chance” attempting to “unilateral[ly] dictate” that the email be off the record; “could . . . have been more careful and . . . asked in advance for . . . a formal agreement,” which is “ <b>what [Arnold] would have done as a communications person</b> ”; and has “a higher duty to . . . do what he can to ensure it’s not printed.” (Emphasis added)	Wilson Decl. Ex. 7 (Arnold Dep. 103:6-24, 104:13-105:4, 119:19-120:11).
26 27 28	83. Arnold confirmed that Musk failed to do the “prudent thing” and was “taking a risk” in	Wilson Decl. Ex. 7 (Arnold Dep. 111:17-

1 unilaterally stating “off the record” when making a  
 2 “heinous accusation” to Mac who has a history of  
 3 being critical of Musk, particularly given that  
 4 Musk decided to repeatedly insult Mac, who in  
 5 return, was making reasonable requests.

6 “Mr. Musk knows that when he says something,  
 7 it is potentially news” and “therefore, Mr. Musk  
 8 has to be careful both in what he says and who he  
 9 says it to.” And under the circumstances, in which  
 10 when Musk talks “it’s news,” and he has “to be  
 11 careful” making “a heinous accusation” to a  
 12 reporter “who has, within two months, produced  
 13 an article profiling Mr. Musk and his companies in  
 14 a way that is critical of all four,” the “**prudent**  
 15 **thing to do**” would have been to first contact Mac  
 16 and ask “can we have an off the record  
 17 conversation.”

18 Instead, Musk sent Mac a string of emails that  
 19 were “demeaning” and “insulting” in response to  
 20 Mac’s “reasonable request[s],” leading to the email  
 21 stating “off the record” and then in the very next  
 22 sentence calling Mac a “fucking asshole.” Arnold  
 23 confirmed that “even if you’ve got some level of  
 24 confidence that somebody’s, from a historical  
 25 standpoint, going to keep your confidence, you’re  
 26 pushing the line when you call them a fucking  
 27 asshole in the first sentence,” and “[i]t makes it  
 28

112:3; 114:12-115:18,  
 116:4-16; 116:19-117:3;  
 117:12-118:6, 120:16-  
 121:2, 124:2-125:10,  
 126:1-127:6, 128:10-  
 129:13, 129:20-130:1,  
 143:20-144:11); *id.* Ex.  
 19.

1 harder” “to keep the information unilaterally off  
2 the record,” and “increased the chances that Ryan  
3 Mac might publish that information.”

4 Arnold confirmed that if he, himself, had sent  
5 the email “[i]t's **hard to envision anybody**  
6 **reasonably expecting** that a reporter who he has  
7 no established relationship of trust with is going to  
8 keep information confidential and off the record at  
9 his unilateral request when he starts off giving the  
10 information in the first sentence calling the  
11 reporter a fucking asshole . . . .”

12 Arnold further confirmed that “when it comes  
13 from Elon Musk on a subject matter that has been  
14 out front as one of the most covered news events  
15 in recent weeks and months, the chances of that  
16 being news to be published are significantly higher  
17 than it's just from the average Joe . . . .”

18 (Emphasis added).

19 84. Arnold also acknowledged that the  
20 BuzzFeed editor, Ben Smith, with whom he spoke  
21 about the “off the record” issue disagreed with  
22 Arnold that Musk could unilaterally make the  
23 email “off the record.” Arnold spoke highly of  
24 Smith, who he had known for ten years, with  
25 whom he personally had a good relationship, and  
26 whom he believes to be “a solid journalist.” Smith  
27 conveyed that Arnold had “been doing this long  
28

Wilson Decl. Ex. 7  
(Arnold Dep. 53:4-16;  
144:22-145:4, 165:25-  
166:4, 168:11-20,  
168:24-169:6; *id.* Ex. 42;  
*id.* Ex. 35 (Mac. Decl. ¶  
5).

1 enough to know that you agree to the terms of a  
 2 conversation in advance.” Smith was not swayed  
 3 by Arnold’s attempts to argue otherwise.

4 **E. Musk Subjectively Intended “Pedophile” and Otherwise Understood**  
 5 **It Would Be So Understood**

6 85. Musk tweeted “pedo guy,” and that it was  
 7 “sus” that Unsworth was allegedly a “British expat  
 8 guy who lives in Thailand,” not that Unsworth was  
 9 a “weird guy” or a “creepy old man.”

Wilson Decl. Ex. 14.

10 86. Musk tweeted “Bet ya a signed dollar it’s  
 11 true” in direct response to a tweet stating “he’s  
 12 calling the guy who found the children a pedo.”

Wilson Decl. Ex. 15.

13 87. Immediately prior to publishing his “pedo  
 14 guy” and “sus” tweet, Musk testified:  
 15 • “[S]hortly before the tweet” “I did just sort  
 16 of a Google search on Chiang Rai and this article  
 17 came up from ... one newspaper about how  
 18 Chiang Rai was essentially the capital of sex  
 19 trafficking in the world.”  
 20 • “And then I was like – googled him, oh, he  
 21 was like, lives in Thailand. Okay, that’s pretty  
 22 suspicious. English expat, doesn’t seem to be –  
 23 have been on the dive team, in a very dodgy part  
 24 of the world.”

Wilson Decl. Ex. 1  
 (Musk Dep. 24:10-25:21,  
 42:4-43:8); Musk Decl. ¶  
 22.

25 88. According to Musk, Thailand is “dodgy”  
 26 because “it is a place where dodgy people go, in  
 27 my experience. People who are often up to no  
 28

Wilson Decl. Ex. 1  
 (Musk Dep. 35:25-  
 40:11).

1	good,” such as “Jared the Subway guy,” who “was	
2	going to Thailand for ... bad reasons” and was	
3	engaged in pedophilia or something,” and “Gary	
4	Glitter,” who “went to Thailand from England to	
5	have sex with underage kids.”	
6	89. Although Musk testified that “pedo guy” is	Wilson Decl. Ex. 1
7	a “common insult” “[g]rowing up in South	(Musk Dep. 51:24-53:5).
8	Africa,” he acknowledged that he has “not used	
9	those words publicly.”	
10	90. Musk’s chief of staff, Sam Teller, had never	Wilson Decl. Ex. 6
11	heard Musk state that the term “pedo guy” meant	(Teller Dep. 57:23-60:25,
12	anything other than pedophile from Musk, and	61:1-25, 65:15-66:24).
13	from Teller’s standpoint, he “understood pedo guy	
14	to be a reference to pedophilia” and “that word	
15	was a shortened version of the word ‘pedophilia.’”	
16	Teller could not recall Musk ever attempting to	
17	clarify that he did not mean pedophile, and the first	
18	time he heard “creepy old man” was in connection	
19	with Musk’s summary judgment motion.	
20	91. Musk and his team received numerous	Wilson Decl. Ex. 1
21	google alerts and press inquiries and compiled	(Musk Dep. 319:1-6); <i>id.</i>
22	lengthy lists of press articles describing the	Ex. 43; <i>id.</i> Ex. 44; <i>id.</i> Ex.
23	accusation of as one of “pedophile,” “pedophilia,”	32; <i>id.</i> Ex. 45.
24	or “pedo,” and never clarified Musk’s alleged	
25	intent, instead: “We should definitely just ignore	
26	these inquiries.”	
27	92. In a July 17, 2018, draft internal company e-	Wilson Decl. Ex. 16.
28		

mail, Musk stated that he “understand[s] that my recent behavior has probably embarrassed you and I’m sorry. I apologize to Vernon Unsworth and am reaching out to him to personally convey this ...” without any reference to “pedo guy” meaning something other than “pedophile.”

93. When Musk tweeted his alleged “apology,” on the night of July 17, 2018, he referenced a “well-written article” which, itself, contains numerous references to his July 15 tweets being a “pedophile accusation.”

Wilson Decl. Ex. 17; *id.* Ex. 46.

94. Musk has admitted and asserted *in judicio* in his Motion to Dismiss:

- that he was “[r]eferencing Thailand’s documented reputation, [when] Musk said that Unsworth was ‘sus’ for being a ‘British expat guy who lives in Thailand,” and “referring back to these suspicions, Musk dubbed Unsworth ‘pedo guy’”;

- that he was “trading on Thailand’s reputation”;

- that the Tenth Circuit has cited a “congressional committee report that identifies Thailand as a country experiencing significant problems with sex tourism,”;

- that “the reasonable reader would make this connection” citing to a California case “reasoning

Wilson Decl. Ex. 47  
(Musk Motion to Dismiss at 4, 7 15-16, 23).



that the ‘prosecution did not [need to] explicitly tell the jury that defendant may have gone to Thailand to have sex with children’ because that ‘was implicit in the mere mention of Thailand’”; and

- that “Musk’s conclusions about Unsworth were ‘inherently subjective’ because *they were based on his personal judgment and assessment of the fact that Unsworth was a British expat who lived in Thailand.*” (Emphasis added).

95. Musk acknowledged that he meant “pedophile” when he testified that he hired and paid an investigator, Howard, more than \$50,000.00 to surveil and investigate Unsworth because:

- “And I was like, well, what if this is a real situation? What if what we have here is another Jeffrey Epstein. ... And what if he uses whatever celebrity he gains from this cave rescue to shield his bad deeds? This would be terrible. And so this was like, wow, somebody should really look into this and just find out what is the real situation here.

**When I said ‘pedo guy,’ I didn’t mean that he was literally a pedophile; it was just an insult.**

But after getting this information from this investigator through Jared, I was like, well, maybe he is actually a pedophile.” (Emphasis added)

Wilson Decl. Ex. 1  
(Musk Dep. 63:9-24).

1 2 3 4 5 6	96. In an August 24, 2018, e-mail, Birchall wrote to Howard of their goal:  “Was his current wife the girl he finally settled on after a period of ‘exploring’ the world of underaged Thai girls?”	Wilson Decl. Ex. 21.
7 8 9 10	97. On August 26, 2018, Birchall e-mailed Howard stating: “for successful confirmation of nefarious behavior there is an additional \$10k bonus.”	Wilson Decl. Ex. 21.
11 12 13 14 15 16	98. On August 28, 2018, Musk tweeted “You don’t think it’s strange he hasn’t sued me yet” in direct response to a tweet stating “your dedication to facts and truth would have been wonderful if applied to that time when you called someone a pedo.”	Wilson Decl. Ex. 18.
17 18 19 20 21 22 23 24 25 26 27 28	99. As set forth herein, Musk instructed his investigator to “leak” stories to the press beginning August 28, 2018, with Birchall e-mailing:  “We would like you to immediately move forward with ‘leaking’ this information to the UK press. ...: Thailand is the world capital of pedophilia[;] This man has frequented Thailand since the 80’s – eventually leading to his divorce to his wife in the UK[;] While the guise of cave exploration is creative, there are amazing and extensive caving systems in many places throughout the world – not just in Thailand ...[;]	Wilson Decl. Ex. 22; <i>id.</i> Ex. 25.

<p>He eventually woman 30 years his minor – whom he met while she was a teenager[;] He had been going to Thailand for decades before marrying her. She wasn’t the first girl he met – and definitely not the first teenager he interacted with.”</p>	
<p>100. On August 30, 2018, Musk accused Unsworth of being a “child rapist” and having a “child bride” in an e-mail to a BuzzFeed reporter, Ryan Mac.</p>	<p>Wilson Decl. Ex. 19.</p>
<p><b><u>F. Musk and His Companies Engaged In Substantial Publicity Efforts With Respect to His Tube Before and After the Rescue</u></b></p>	
<p>101. Musk himself acknowledged in his deposition that he “can see how this would look like a ‘narcissistic PR stunt,’” in reference to a Financial Times article headlined “Elon Musk’s weakness for self-promotion masks his potential” and sub-headlined “The billionaire’s meddling in the Thai cave rescue looks like a narcissistic PR stunt.”</p>	<p>Wilson Ex. 1 (Musk Dep. 262:2-14); <i>id.</i> Ex. 48.</p>
<p>102. Musk engaged in substantial publicity efforts related to the Rescue, “Tweeting almost daily about it,” with “videos and pictures.” And, as Teller admitted, “Musk wanted to publicize the efforts that SpaceX” was “making to build this tube.” Employees at Musk’s companies were likewise engaged in a PR push related to the Tube.</p>	<p>Wilson Decl. Ex. 6 (Teller Dep. 162:13-17, 166:16-21); <i>id.</i> Ex. 49; <i>id.</i> Ex. 50.</p>
<p>103. Musk’s publicity efforts related to the</p>	<p>Wilson Decl. Ex. 62; <i>id.</i></p>

1 2 3 4	Rescue and the Tube even raised concerns within his team, including worries that “it makes engineers at our company lose confidence in Elon.”	Ex. 6 (Teller Dep. 162:13-25).
5 6 7 8 9 10 11 12 13 14 15 16	104. Teller admitted that “prior to the ‘pedo guy’ Tweet . . . there had been a fair amount of negative press about how public Elon Musk had been, posting videos and other information on his Twitter account, in terms of putting out there his efforts to help the children? He had gotten a significant amount of negative publicity for doing that[ – ] . . . for his publicly talking about it so much.” And Tesla’s communications team collected and distributed (including to Teller) media reports that were critical of the Tube and/or Musk’s publicity efforts.	Wilson Decl. Ex. 6 (Teller Dep. 53:10-24); <i>id.</i> Ex. 51; <i>id.</i> Ex. 48; <i>id.</i> Ex. 52.
17 18 19 20 21 22	105. Teller acknowledged that Musk was “[c]ertainly” “unhappy with all of the coverage that criticized his efforts with the tube, including the coverage that was suggesting that it was a PR stunt,” and “that was before Mr. Unsworth ever said a word to CNN.”	Wilson Decl. Ex. 6 (Teller Dep. 88:13-21).
23 24 25 26 27 28	106. On July 9th (PDT), before the Boys were rescued, Teller told Musk that the BBC was reporting that the Thai “head of the rescue mission,” who was the Thai regional governor, stated that “even though” Musk and his	Wilson Decl. Ex. 51.

1	companies’ “equipment is technologically	
2	sophisticated, it doesn’t fit with our mission to go	
3	in the cave” and was “not practical.”	
4	107. Musk responded before the Boys	Wilson Decl. Ex. 53.
5	were rescued by telling Davis and Teller on July	
6	9th (PDT) that “[w]e need to go all out and make	
7	this guy retract his comment,” and that they	
8	“should . . . test [the Tube]” in a special apparatus	
9	that simulated some of the conditions in the Cave.	
10	108. On July 10th, before the Boys were	Wilson Decl. Ex. 6
11	all rescued, Musk and members of his team that	(Teller Dep. 228:17-
12	were supposed to be engaged in developing the	229:16); <i>id.</i> Ex. 53; <i>id.</i>
13	Tube were instead enlisting the Thai government	Ex. 8 (Davis Dep. 10:5-6,
14	(including the Thai Prime Minister) to publicly	10:17-11:2, 93:23-94:5
15	reverse a statement by the Thai regional	(stating discussions with
16	governor’s statement that the Tube was not	consul occurred before
17	practical and did not fit the mission. Those efforts	July 10th, 12:12 am
18	included:	EDT), 94:17-95:7,
19	• Using the Thai Consul in Los Angeles as an	100:16-101:10, 105:25-
20	intermediary to get the Thai Prime Minister to issue	106:8 , 108:4-17, 109:19-
21	a statement “revers[ing] the statement that the	110:2, 112:18-113:14,
22	Tube did not fit the mission and was not practical,”	116:4-118:8, 119:24-
23	and even attempting to get the Prime Minister to	121:5, 130:16-132:10);
24	issue a statement drafted by Musk’s team—an	<i>id.</i> Ex. 54.
25	effort that was largely led by Steve Davis, the	
26	president of the Boring Company and a SpaceX	
27	engineer.	
28		

1       • Teller, who was upset about the statement  
2 and called the former Thai regional governor an  
3 “ungrateful asshole,” also attempted to craft  
4 statements that would then be issued by the Thai  
5 government, including the Prime Minister. Teller  
6 suggested that the “PM should say SpaceX is  
7 awesome. Enginerrrs [sic] helpful[.] Pod not  
8 necessary because this went well but it’s a useful  
9 and cool desig[n].”

10       • Davis or someone he worked with conveyed  
11 to the Secretary General of the Thai Prime Minister  
12 that the Prime Minster’s statement should “stress  
13 that the mini sub would have worked and was  
14 designed with feedback from the divers,” and that  
15 the “min subs are [a] technically sound and  
16 practical solution” for the rescue.

17       • The former Thai governor would not engage  
18 with Musk’s efforts to release a public statement  
19 “until mission is over.”

20       • Still, before the Boys were all rescued,  
21 Musk’s team was able to arrange a three prong  
22 publicity approach related to the Tube in which  
23 they gave the “US military” a statement, the Thai  
24 “PM office [was] hit from all sides – consul, our  
25 team on ground,” and the Thai “Governor office  
26 hit by higher ups but will take no action.”

27       • Davis communicated to Teller that the Thai  
28

1 2 3 4 5 6 7 8 9 10 11	<p>Prime Minister “will be holding press conference and will say what we want,” including mentioning Tesla’s “Powerall donation.” All of which was occurring before the Boys were even all rescued.</p> <ul style="list-style-type: none"> <li>• Davis recommended that “[o]nce the kids are out, we should demo the sub in the cave.”</li> <li>• At 5:13 am EDT, before all the Boys were rescued, Davis confirmed to Teller the Thai Prime Minister would soon be posting a written statement on a “website” soon related to the Tube and Musk</li> </ul>	
12 13 14 15 16	<p>109. Davis conceded that their “concern” about the “Thai governor’s office official publicly stating that the tube was ‘not practical’” did not have “anything whatsoever to do with efforts to save these children and their coach.”</p>	Wilson Decl. Ex. 8 (Davis Dep. 104:8-19).
17 18 19 20	<p>110. Davis admitted that he spent “a lot more time texting” with Teller and Musk “about the publicity regarding the ‘not practical’ comment than . . . about helping these kids.”</p>	Wilson Decl. Ex. 8 (Davis Dep. 106:18-25); <i>id.</i> Ex. 55; <i>id.</i> Ex. 54.
21 22 23 24 25 26	<p>111. Before the Boys were all rescued, the Thai Prime Minister made comments about Musk and the Tube, including that “[w]ith regards to the (cave) problem, [Musk] said he had his technology,” “[t]he tools he brought are all useful,” and Musk “understands everything.”</p>	<i>id.</i> Ex. 56.
27 28	<p>112. Before the Boys were all rescued, Teller distributed a translation of the Thai Prime</p>	Wilson Decl. Ex. 56.

Minister's statement about Musk and the Tube to members of the media, including the BBC, the Guardian, Business Insider, Bloomberg, and NBC.

113. After the Boys were all rescued, Musk's team communicated about trying to test the Tube, and that "E[lon] will call the PM [of Thailand] if necessary." Musk's team concocted an excuse for testing the Tube despite the completion of the Rescue: "We can say we want to test it so that we know it's viable for future use[.] Etc[.] Thanks." When Davis questioned whether it "[h]as to be same cave? To the boys spot?", Teller who was traveling with Musk responded, "That's what he said. If not possible then let's tell him with a next best option." A SpaceX employee then called Musk to "talk[] him out of it."

Davis proposed alternatives including to "train in the Navy pools" in Bangkok," and sent pictures to Teller of "training" with the Tube, hoping it "helps." Teller rejected the pictures as "useless" because the Tube was "[n]ot in water."

Musk's request to take the tube into the cave after the fact was also documented on a WhatsApp chat with Musk's team, with person on "the marketing team at SpaceX" and Armor Harris stating on July 10, after the boys were rescued, "we can't accommodate Elon's request to send

Wilson Decl. Ex. 8 (Davis Dep. 138:16-139:12, 139:20-140:5); *id.* Ex. 54; *id.* Ex. 6 (Teller Dep. 216:11-23); *id.* Ex. 57; *id.* Ex. 9 (Harris Dep. 122:5-123:1 ("So it as after the – all the kids were out. Elon had asked if it was possible to take the pod in there all the way and see if it would be able to make it through the passes...").



1 2 3 4 5 6	them into the cave with the pod. Would require 4 divers (2 to stage tanks ahead of the main dive, 2 to do the main dive). We can't ask them to go in there and risk their lives for a demo that won't make the pod any more useful for future scenarios..."	
7 8 9 10 11 12 13 14 15 16	114. On July 11, 2018, Musk publicly responded to the widespread criticism of his tube and his motivations for sending it to Thailand, tweeting:  "This reaction has shaken my opinion of many people. We were asked to create a backup option & worked hard to do so. Checked with the dive team many times to confirm it was worthwhile. Now it's there for anyone who needs it in future. Something's messed up if this is not a good thing."	Wilson Decl. Ex. 61.
17 18 19 20 21 22	115. More than one week after the Boys were rescued, Musk also publicized through Twitter an article by a Quora user that painted a positive picture of Musk and his team's Rescue efforts, including related to the Tube.	Wilson Decl. Ex. 6 (Teller Dep. 271:17-23, 273:12-15); <i>id.</i> Ex. 58; <i>id.</i> Ex. 17.
23 24 25 26	116. Davis admitted that "[t]he goal should never have been about getting photographs or videos to publicize someone's voluntary efforts to save another's life just for positive publicity."	Wilson Decl. Ex. 8 (Davis Dep. 152:11-16).
27 28	117. Even as of September 9, 2019, "the project manager for the design of the pod,"	Wilson Decl. Ex. 8 (Harris Dep. 11:14-18,

1 testified that there was a “significant amount of  
2 uncertainty with regard “how big that smallest  
3 restriction” in the cave was, and he “can’t say”  
4 whether the “the pod would have made it to the  
5 boys.”

24:22-28:15).

**PLAINTIFF’S RESPONSE TO DEFENDANT’S  
STATEMENT OF UNCONTROVERTED FACTS**

<b><u>Defendant’s Uncontroverted Facts and Supporting Evidence</u></b>	<b><u>Plaintiff’s Response and Supporting Evidence</u></b>
<b><u>A. The Thai Cave Rescue and Plaintiff’s Role<sup>3</sup></u></b>	
<p>1. On June 23, 2018, members of a Thai youth soccer team, and one of their coaches went missing in the Tham Luang Cave System in the Chiang Rai province of Thailand.</p> <p>(Dkt. 1, Complaint (“Compl.”) ¶ 23.)</p>	Undisputed.
<p>2. Within days of the soccer team going missing, an international search and rescue mission to locate the team was undertaken.</p> <p>(Compl. ¶¶ 2, 3, 23-61.)</p>	Undisputed.
<p>3. The story of the stranded soccer team and the efforts to rescue them captured the attention</p>	Undisputed.

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<sup>3</sup> Musk’s headings for his facts are included herein without response from Unsworth only for the convenience of the Court and should not be deemed to be an admission of any kind.

1 2 3 4 5 6 7 8 9	of the world. <i>(Id.)</i>	
10 11 12 13 14 15 16	4. On June 24, 2018, Plaintiff Vernon Unsworth (“Mr. Unsworth”) traveled to the cave system after learning that the soccer team had gone missing. <i>(Compl. ¶¶ 29-30.)</i>	Undisputed.
17 18 19 20 21 22 23 24 25 26 27 28	5. Mr. Unsworth participated in efforts to rescue the soccer team (the “Thai Cave Rescue”). <i>(Compl. ¶¶ 2, 31-41.)</i>	Undisputed, but an incomplete statement of Unsworth’s efforts with regard to the Thai Cave Rescue. Unsworth has been described by critical members of the rescue team <sup>4</sup> as: <ul style="list-style-type: none"><li>• “a lynchpin of the operation” without whom “the chances of a</li></ul>

<sup>4</sup> Unsworth would have thought his efforts and role to in the cave rescue to have been immaterial to Musk’s motion about his own alleged state of mind regarding false accusations of pedophilia and child rape. Thus, Unsworth would not have burdened the Court with this additional information but for Musk’s continued efforts to defame and assassinate Unsworth’s character via publicly filed pleadings, including presenting as true the unverified statements of Howard that Musk himself admitted under oath were false while omitting that Howard never provided documentation to substantiate any defamatory statement and that Howard reported information directly contradicting Musk’s accusations. With regard to Unsworth’s efforts in the cave rescue, Musk stated in his brief that “[b]eyond” having “traveled to the cave system,” and “contacted divers and advised the rescue team about where the missing boys might be found,” Unsworth “did not assist in the rescue or participate in any of the cave diving necessary to the rescue” and “he certainly did not put his life at risk, as so many others did.” (Dkt. 58 (“Mot.”) 3.) There is no good reason whatsoever for Musk to belittle Unsworth’s contributions in saving the lives of thirteen individuals, though his expected purpose is more fully described herein in Plaintiff’s Statement of Additional Material Facts Precluding Summary Judgment, and is plainly motivated by ill will, malice, and spite.

successful outcome would have been very low indeed” (Dr. Rob Harper);

- “essential and pivotal” without whose “presence at Tham Luang from the start of the rescue all thirteen of the trapped party would now be dead” (Mr. Martin Ellis);

- “vital to its [the rescue’s] planning” without whose “intervention, the boys could all have died in those caves” (Mr. Richard William Stanton MBE GM);

- “If I was to name one person who was crucial to the mission and successful rescue of the children, it would be Vernon Unsworth,” whose “firsthand knowledge of the cave and caving expertise was invaluable to the rescue effort.”

(Wilson Decl. Ex. 10 (Harper Decl. ¶ 8); *id.* Ex. 11 (Ellis Decl. ¶¶ 9, 12); *id.* Ex. 12 (Stanton Decl. ¶¶ 5, 8); *id.* Ex. 13 (Svasti Decl. ¶¶ 4-5).)

Responding further, Unsworth testified that “[w]ell over 10,000 people, which included volunteers and cave rescuers,” from “at least 24 countries” “contributed to the cave rescue,” which successfully ended on July 10, 2018.

	(Wilson Decl. Ex. 3 (Unsworth Dep. 155:16-157:15).)
<p>6. On or about June 29, 2018, Mr. Unsworth was interviewed by BBC- Thai regarding the Thai Cave Rescue.</p> <p>(Declaration of Michael T. Lifrak (“Lifrak Decl.”), ¶ 3.)</p>	Undisputed as stated, but not a material fact.
<p>7. On July 3, 2018, <i>The New York Times</i> published an article titled “Thailand Cave Rescue Turns to How to Extract Trapped Soccer Team,” which quoted Mr. Unsworth.</p> <p>(Lifrak Decl. Ex. 3.)</p>	Undisputed as stated, but not a material fact.
<p>8. On July 4, 2018, <i>The Daily Mail</i> published an article about Mr. Unsworth titled “British caver is hailed a ‘magician’ after convincing Thai officials to bring in heroic UK divers who found stranded schoolboys, aided by his knowledge of the tunnels.”</p> <p>(Lifrak Decl. Ex. 4.)</p>	Undisputed as stated, but not a material fact.
<p>9. On July 13, 2018, CNN published an article titled “British diver recalls Thai cave rescue: ‘Are</p>	Undisputed as stated, but not a material fact.

1 2 3 4 5	we heroes? No,” which quoted Mr. Unsworth and described his involvement in the rescue. (Lifrak Decl. Ex. 5.)	
6 7 8 9 10 11 12 13	10. On July 15, 2018, <i>The Sunday Times</i> published an article titled “Exclusive interview with cave rescue hero Vernon Unsworth: ‘If the Brits hadn’t been called in, it would have been too late,” which quoted Mr. Unsworth and described his involvement in the rescue. (Lifrak Decl. Ex. 6.)	Undisputed as stated, but not a material fact.
14 15 16 17 18 19 20 21 22	11. On December 3, 2018, in its December “Men of the Year” edition, <i>GQ Magazine</i> published an article titled “Miracle At Tham Luang” that described Mr. Unsworth’s involvement in the Thai Cave Rescue. (Lifrak Decl. Ex. 7.)	<u>Evidentiary Objection</u> Irrelevant to any issue in dispute on this motion (FRE 401), waste of time (FRE 403). <u>Response</u> Undisputed as stated, but not a material fact.
23 24 25 26 27 28	12. Mr. Unsworth testified that at the Thai Cave Rescue site, his “face was very well known to reporters.” (Lifrak Decl. Ex. 1 (Unsworth Dep. at 292:11-18).)	<u>Evidentiary Objection</u> Irrelevant to any issue in dispute on this motion (FRE 401), waste of time (FRE 403). <u>Response</u> Undisputed as stated, but not a material

1		fact.
2	13. In June 2019, Mr. Unsworth	<u>Evidentiary Objection</u>
3	was titled a Member of the Most	Irrelevant to any issue in dispute on this
4	Excellent Order of the British	motion (FRE 401), waste of time (FRE
5	Empire (MBE).	403).
6	(Lifrak Decl. Ex. 1 (Unsworth	<u>Response</u>
7	Dep. 102:2-15); Ex. 9 (Rog Resp.)	Undisputed as stated, but not a material
8	at 7.)	fact.
9	14. Mr. Unsworth participated in	<u>Evidentiary Objection</u>
10	two National Geographic	Irrelevant to any issue in dispute on this
11	documentaries titled “The Cave”	motion (FRE 401), waste of time (FRE
12	and “Drain the Oceans.”	403), vague.
13	(Lifrak Decl. Ex. 9 (Rog Resp.)	<u>Response</u>
14	at 8.)	Undisputed as stated, but not a material
15		fact.
16	15. Mr. Unsworth contributed to	<u>Evidentiary Objection</u>
17	three books about the Thai Cave	Irrelevant to any issue in dispute on this
18	Rescue: <i>The Boys in the Cave</i> by	motion (FRE 401), waste of time (FRE
19	Matt Gutman, <i>The Cave</i> by Liam	403), vague.
20	Cochrane, and an untitled and not	<u>Response</u>
21	yet released children’s book by	Undisputed as stated, but not a material
22	Christina Soontornvat.	fact.
23	(Lifrak Decl. Ex. 9 (Rog Resp.)	
24	at 6.)	
25	16. In December 2018, Mr.	<u>Evidentiary Objection</u>
26	Unsworth gave an interview to the	Irrelevant to any issue in dispute on this
27	British Broadcasting Service	motion (FRE 401), waste of time (FRE
28		



1 2 3 4 5	<p>(“BBC”) about his involvement in the Thai Cave Rescue.</p> <p>(Lifrak Decl. Ex. 9 (Rog Resp.) at 5.)</p>	<p>403).</p> <p><u>Response</u></p> <p>Undisputed as stated, but not a material fact.</p>
6 7 8 9 10 11 12	<p>17. In June 2019, Mr. Unsworth gave an interview to the BBC Beyond Today podcast about his involvement in the Thai Cave Rescue.</p> <p>(Lifrak Decl. Ex. 9 (Rog Resp.) at 5.)</p>	<p><u>Evidentiary Objection</u></p> <p>Irrelevant to any issue in dispute on this motion (FRE 401), waste of time (FRE 403).</p> <p><u>Response</u></p> <p>Undisputed as stated, but not a material fact.</p>
13 14 15 16 17 18 19 20	<p>18. After the Thai Cave Rescue concluded, Mr. Unsworth communicated with members of the media including journalist Phillip Sherwell (who writes for <i>The Sunday Times</i>) and ABC News Correspondent Matt Gutman.</p> <p>(Lifrak Decl. Exs. 10-12.)</p>	<p><u>Evidentiary Objection</u></p> <p>Irrelevant to any issue in dispute on this motion (FRE 401), waste of time (FRE 403).</p> <p><u>Response</u></p> <p>Undisputed as stated, but not a material fact.</p>
21 22 23 24 25 26 27 28	<p>19. Mr. Unsworth has given a number of presentations about the Thai Cave Rescue, including presentations to NIST International School of Bangkok, Shresbury International School of Bangkok, British Club Bangkok, ASEAN Foreign Ministers, ASEAN</p>	<p><u>Evidentiary Objection</u></p> <p>Irrelevant to any issue in dispute on this motion (FRE 401), waste of time (FRE 403).</p> <p><u>Response</u></p> <p>Undisputed as stated, but not a material fact.</p>

Ministers of Finance, ASEAN Civil  
Servants, SCB Bank Officials.  
(Lifrak Decl. Ex. 9 (Rog Resp.)  
at 7-8.)

20. Mr. Unsworth has spoken to  
agents about film rights regarding  
the Thai Cave Rescue.  
(Lifrak Decl. Ex. 13.)

Evidentiary Objection

Irrelevant to any issue in dispute on this  
motion (FRE 401), waste of time (FRE  
403), misleading and confusing (FRE  
403).

Response

Undisputed but not a material fact.  
Although the citation does not support this  
statement of fact, Unsworth admits he has  
had limited conversations with individuals  
about films. During November 2018,  
only, Unsworth established an informal  
and temporary relationship with an agent,  
but the relationship ended when Unsworth  
did not execute a proposed agency  
agreement and no film rights ever accrued.  
(Wilson Decl. Ex. 59.)

**B. The Public Debate Over the Cave Rescue  
and Mr. Musk's Involvement**

21. On July 13, 2018, the  
*Washington Post* published an  
article entitled "Time is running  
out: Inside the treacherous rescue

Evidentiary Objection

Irrelevant to any issue in dispute on this  
motion (FRE 401), waste of time (FRE  
403), inadmissible hearsay to the extent

of boys trapped in a Thai cave.”  
 Among other things, the article described how “[i]deas [about how to rescue the team] came from every corner: a network of corrugated pipes the boys could crawl through; floating them out in body bags. Billionaire entrepreneur Elon Musk began construction of a custom kid-size minisub.”  
 (Lifrak Decl. Ex. 20.)

submitted for the truth of the matter asserted (FRE 802).

Response

Undisputed that “the article described” such things, but not a material fact.

22. On July 7, 2018, *The New York Times* published an article titled “Elon Musk Thinks a Mini-Submarine Could Help in Thai Cave Rescue.” Among other things, it said:

- “Engineers from companies led by Elon Musk, the billionaire known for outside-the-box ideas like his aspiration to colonize Mars, were en route to Thailand on Saturday to offer their expertise to help rescue 12 boys and their soccer coach from the Tham Luang cave in northern Thailand.”

- “On Twitter, Mr. Musk has

Evidentiary Objection

Irrelevant to any issue in dispute on this motion (FRE 401), waste of time (FRE 403), inadmissible hearsay to the extent submitted for the truth of the matter asserted (FRE 802).

Response

Undisputed that “it said” such things, but not a material fact.

1 mused about potential inventions  
2 that could help the trapped soccer  
3 team, including a miniature  
4 submarine made from part of a  
5 SpaceX rocket.”

6 • “Edgar Choueiri, a professor  
7 at Princeton University who  
8 specializes in rocket research, said  
9 Mr. Musk’s submarine idea  
10 suggested that he imagined the  
11 Falcon rocket’s hollow transfer  
12 tube — which helps move liquid  
13 oxygen to fuel the rocket’s  
14 engine— would be the appropriate  
15 size to transfer the boys out of the  
16 flooded cave.”

17 • “‘I would never bet against  
18 Elon Musk,’ Mr. Choueiri said.”

19 • “Others were not as  
20 confident. Greg Moore, a regional  
21 director for the National Cave  
22 Rescue Commission, said most  
23 rescues prompt a series of  
24 newfangled ideas that are not  
25 necessarily practical. Mr. Musk’s  
26 submarine would likely have  
27 trouble fitting through the  
28

1 narrowest passageways, he said.”

2 • “This is not Mr. Musk’s first  
3 foray into emergency assistance. In  
4 the wake of Hurricane Maria in  
5 Puerto Rico, which resulted in  
6 devastating power outages, Tesla  
7 provided batteries to help keep the  
8 lights on.” (Lifrak Decl. Ex. 14.)

9 23. On July 10, 2018,  
10 *The New York Times* published an  
11 article titled “Elon Musk Defends  
12 His Rejected Mini- Sub Plan for  
13 Thai Cave.” Among other things, it  
14 said:

15 • “As the world watched  
16 rescuers struggle to save 12 boys  
17 and their soccer coach trapped in a  
18 cave in northern Thailand, the tech  
19 billionaire Elon Musk dreamed up  
20 a ‘kid-size’ submarine to help. It  
21 turns out they didn’t need it. So he  
22 left it there, ‘in case it may be  
23 useful in the future,’ he said on  
24 Twitter.”

25 • “On Tuesday, the head of  
26 the search operation, Narongsak  
27 Osottanakorn, until recently the  
28

Evidentiary Objection

Inadmissible hearsay to the extent  
submitted for the truth of the matter  
asserted (FRE 802).

Response

Undisputed that “the article said” such  
things, but not a material fact.

1 provincial governor, rejected the  
2 notion that Mr. Musk's custom-  
3 made submersible was suitable for  
4 the extraction. 'I assure you that  
5 the equipment he brought to help  
6 us is not practical for our mission,'  
7 Mr. Narongsak said. 'Even though  
8 the equipment has state of the art  
9 technology, it does not fit our  
10 mission in the cave.'"

11 • "In his tweets amid the  
12 rescue, Mr. Musk presented his  
13 own evidence that team leaders had  
14 welcomed his help. He said of Mr.  
15 Narongsak: 'The former Thai  
16 provincial governor (described  
17 inaccurately as 'rescue chief') is  
18 not the subject matter expert.' He  
19 said the expert was Richard  
20 Stanton, one of the first two British  
21 cave divers to reach the soccer  
22 team, and Mr. Musk shared an  
23 email in which Mr. Stanton had  
24 asked him to 'please keep working  
25 on the capsule details.' But a  
26 spokesman for Mr. Stanton said  
27 Tuesday that the cave proved to be  
28 too narrow for the mini-

1	submarine.”	
2	(Lifrak Decl. Ex. 15.)	
3	24. On July 10, 2018,	<u>Evidentiary Objection</u>
4	the BBC published an article	Inadmissible hearsay to the extent
5	titled “Why was Elon Musk at the	submitted for the truth of the matter
6	Thai cave rescue?” Among other	asserted (FRE 802).
7	things, the article said:	<u>Response</u>
8	• “The SpaceX and Tesla	Undisputed that “the article said” such
9	chief posted on social media that	things, but not a material fact.
10	he had visited the operation's	
11	command centre, where he said he	
12	had left a mini-submarine that had	
13	been designed to carry a trapped	
14	football team to safety. The head of	
15	the rescue mission thanked Mr.	
16	Musk for his offer. But he said the	
17	sub could not be used.”	
18	• “The billionaire has form	
19	with making eye-catching	
20	humanitarian acts.”	
21	• “Last year, he was thanked	
22	by Puerto Rico's governor for	
23	setting up a solar panel and battery	
24	system to provide power to a	
25	children's hospital in San Juan after	
26	it was hit by a hurricane.”	
27	• “But while his most recent	
28		

intervention has won him praise from some, others have questioned his motivations and suggested he might even have been a distraction.”

- ““Elon Musk is well known to have an eye for the headlines, but to be fair he only became involved after a message from one of his army of fans on Twitter,’ commented the BBC’s technology correspondent Rory Cellan-Jones.”

- ““The fact that his company’s space technology and its much vaunted tunneling skills proved irrelevant to the operation is a reminder that sometimes this tech superhero doesn’t quite match up to the Iron Man of his fans’ dreams.””

(Lifrak Decl. Ex. 16.)

25. On July 10, 2018, the tech publication Gizmodo published an article titled “Is Elon Musk Serious?” Among other things, the article said:

Evidentiary Objection

Inadmissible hearsay to the extent submitted for the truth of the matter asserted (FRE 802)

Response



1	<ul style="list-style-type: none"> <li>• “A kid-sized submarine</li> </ul>	Undisputed that “the article said” such
2	arrived in northern Thailand, just a	things, but not a material fact.
3	few hours before the final four	
4	members of a youth soccer team	
5	and their coach were rescued from	
6	the flooded Tham Luang cave	
7	complex. Elon Musk, whose	
8	minions had built the sub out of	
9	SpaceX rocket materials for the	
10	sole purpose of moving the trapped	
11	boys to safety, delivered the mini	
12	sub himself and announced his	
13	presence in a tweet to his 22	
14	million followers. Meanwhile, the	
15	rescue chief said that the kid-sized	
16	submarine was ‘not practical’ for	
17	the boys, as thousands heaped	
18	praise onto Musk for doing—	
19	well—it’s unclear if the bombastic	
20	billionaire really did anything	
21	helpful. Which makes you wonder:	
22	is Elon Musk serious with this	
23	shit?”	
24	<ul style="list-style-type: none"> <li>• “The short answer to that</li> </ul>	
25	question is no. Musk has a long	
26	track record of promising to solve	
27	huge problems and then either	
28		

1 missing deadlines or falling short.

2 Along the way, he's also built up a  
3 cult of personality that leads fans  
4 to compare him to comic book  
5 superheroes. So even if Musk isn't  
6 really serious about his ridiculous,  
7 buzz-building projects, plenty of  
8 people still think he is. We need to  
9 stop that."

10 • "The weird difference  
11 between some of Musk's famous  
12 vaporific moonshots and the kid-  
13 sized submarine is that Musk  
14 actually built the sub. But it's  
15 nothing more than a useless stunt.  
16 Not only did Musk show up too  
17 late to help, he showed up with a  
18 tool that wasn't even helpful. As it  
19 seemed increasingly obvious that  
20 the sub wouldn't actually rescue  
21 any boys from the cave, Musk later  
22 tweeted that it 'could also be used  
23 as an escape pod in space.' So at  
24 least there's that non-existent  
25 contingency."

26 • "What's most frustrating  
27 about Musk's stunts is how  
28

everything feels a little bit like a  
grift. Like, every time, you have to  
wonder what Musk is really  
selling, and as time goes on, those  
sales pitches become more  
convoluted. The Mars thing was a  
great way to build publicity for  
SpaceX. The Hyperloop fiasco  
seems like some sort of weird ad  
for Tesla and the future of  
transportation. The Boring  
Company, complete with  
promotional flamethrowers, is a  
different version of a Tesla ad. But  
with this kid-sized submarine, it's  
not immediately clear what Musk  
is shilling."

(Lifrak Decl. Ex. 17.)

26. On July 11, 2018, *The New York Daily News* published an article titled "Elon Musk hits back at criticism over inserting himself in Thai boys cave rescue." The article said, among other things:

- "Billionaire businessman Elon Musk has defended against allegations that he needlessly

Evidentiary Objection

Inadmissible hearsay to the extent submitted for the truth of the matter asserted (FRE 802).

Response

Undisputed that "the article said" such things, but not a material fact.

1 inserted himself into the plight of  
2 the Thai soccer team stuck in a  
3 flooded cave. Narongsak  
4 Osottanakorn, who led the rescue  
5 effort that freed the 12 boys and  
6 their coach on Tuesday, said  
7 Musk's offer of a tiny, boy-sized  
8 submarine was 'not practical' to  
9 use at the Tham Luang cave."

10 • "Musk had been following  
11 the boys' calamity, which started  
12 on June 23, and had a team of his  
13 engineers make the sub. He posted  
14 on Twitter from the cave on  
15 Monday, and said he was leaving  
16 his creation there 'in case it may be  
17 useful in the future.'"

18 • "Some internet  
19 commentators took Musk's motives  
20 as purely self-focused, given the  
21 flood of media attention to the Wild  
22 Boars team and international rescue  
23 effort. 'This reaction has shaken  
24 my opinion of many people. We  
25 were asked to create a backup  
26 option & worked hard to do so.  
27 Checked with dive team many  
28

times to confirm it was worthwhile.  
Now it's there for anyone who  
needs it in future. Something's  
messed up if this is not a good  
thing,' he posted on Twitter  
Wednesday."

(Lifrak Decl. Ex. 18.)

27. On July 12, 2018, *The New York Times* published an article titled "Thai Navy May Put Elon Musk's Mini-Submarine to Use. One Day." The article said, among other things:

- "Thailand may have use for Elon Musk's 'kid-sized' submarine after all."
- "The tech billionaire had designed the miniature submarine, built with rocket parts, to help save the 12 boys and their 25-year-old soccer coach trapped in a flooded cave in northern Thailand. On Tuesday, rescuers pulled off an improbable feat when they finished removing all 13 people from the Tham Luang Cave."
- "The chief of the rescue mission had called the device 'not

### Evidentiary Objection

Inadmissible hearsay to the extent submitted for the truth of the matter asserted (FRE 802).

### Response

Undisputed that "the article said" such things, but not a material fact.

1 practical' for the operation, which  
2 required squeezing through narrow  
3 passageways in the cave, but a  
4 Thai military official said the  
5 mini- submarine could be useful  
6 for future rescue missions.”

7 • “Maj. Gen. Chalongchai  
8 Chaiyakham, the deputy  
9 commander to Thailand’s Third  
10 Army, said Wednesday that the  
11 mini-submarine would be  
12 appropriate for use in open water  
13 and that he had heard the  
14 technology would be given to the  
15 Thai Navy SEAL team.”

16 • “A Boring Company  
17 spokesman said the SpaceX  
18 engineers met with members of  
19 the Thai Navy on Wednesday and  
20 that the last employees left  
21 Thailand on Thursday morning.  
22 Mr. Musk responded to the photos  
23 of the training session on Twitter,  
24 saying the engineers were also  
25 getting feedback from British  
26 divers on how the technology  
27 could be improved.”

28 (Lifrak Decl. Ex. 19.)

<p>28. On July 10, 2018, in the BBC article <i>Why was Elon Musk at the Thai cave rescue?</i> the former Provincial Governor of Chiang Rai was quoted, claiming that Mr. Musk's mini-submarine was "not practical with our mission" to rescue the soccer team.</p> <p>(Lifrak Decl. Ex. 16.)</p>	<p><u>Evidentiary Objection</u></p> <p>Inadmissible hearsay to the extent submitted for the truth of the matter asserted (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that "the article said" such things, but not a material fact.</p>
<p>29. On July 10, 2018, Mr. Musk responded to governor's statement on Twitter.</p> <p>(Declaration of Elon Musk ("Musk Decl.") Musk Decl. ¶ 18, Ex. E.)</p>	<p>Undisputed as stated.</p>
<p>30. Mr. Musk donated the mini-submarine to the Thai Navy to be used in future rescue missions.</p> <p>(Lifrak Decl. Ex. 2 (Musk Dep. 121:16-22); Musk Decl. ¶ 15.)</p>	<p><u>Evidentiary Objection</u></p> <p>Inadmissible hearsay to the extent submitted for the truth of the matter asserted (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed, but not a material fact.</p>
<p>31. Mr. Musk is the founder and CEO of Tesla Inc., a publicly traded company.</p> <p>(Musk Decl. ¶ 1.)</p>	<p>Undisputed.</p>
<p><b>C. <u>Without Provocation, Mr. Unsworth Attacks Musk on CNN</u></b></p>	
<p>32. On or about July 13, 2018,</p>	<p>Undisputed, but this interview was at</p>

<p>1 Mr. Unsworth gave an interview to</p> <p>2 CNN International.</p> <p>3 (Compl. ¶¶ 70-71; Lifrak Decl.</p> <p>4 Ex. 1 (Unsworth Dep. 213:22-</p> <p>5 214:5); Ex. 22.)</p>	<p>the invitation of CNN and his statements</p> <p>an impromptu response to the reporter's</p> <p>questions.</p> <p>(Wilson Decl. Ex. 3 (Unsworth Dep.</p> <p>162:11-170:5).)</p>
<p>7 33. Before giving his interview</p> <p>8 to CNN International on July 13,</p> <p>9 2018, Mr. Unsworth watched a</p> <p>10 video of the mini-submarine</p> <p>11 constructed by Mr. Musk and his</p> <p>12 team.</p> <p>13 (Lifrak Decl. Ex. 1 (Unsworth</p> <p>14 Dep. 214:17-218:10).)</p>	<p>Undisputed that Unsworth watched a</p> <p>video of the tube prior to his July 13 CNN</p> <p>interview; otherwise disputed, including</p> <p>because the citation does not support the</p> <p>statement that Musk "constructed" the</p> <p>tube.</p>
<p>15 34. In his interview, in response</p> <p>16 to a question asking what his</p> <p>17 "thoughts on [Mr. Musk's] idea</p> <p>18 was," Mr. Unsworth stated that</p> <p>19 "[Mr. Musk] can stick his</p> <p>20 submarine where it hurts. It just had</p> <p>21 absolutely no chance of working.</p> <p>22 He had no conception of what the</p> <p>23 cave passage was like. The</p> <p>24 submarine, I believe, was about 5</p> <p>25 foot 6 long, rigid, so it wouldn't</p> <p>26 have gone round corners or round</p> <p>27 any obstacles. It wouldn't have</p> <p>28</p>	<p>Undisputed, but incomplete.</p> <p>Musk admitted he was aware that the</p> <p>"stick his submarine where it hurts" phrase</p> <p>was "idiomatic" and was not intended</p> <p>literally.</p> <p>(Wilson Decl. Ex. 1 (Musk Dep. 31:18-</p> <p>32:22, 35:11-12, 120:9-25).)</p>



made the first fifty meters into the cave from the dive start point. Just a PR stunt.” He also stated that “[Mr. Musk] was asked to leave [the rescue site] very quickly.” (Lifrak Decl. Ex. 21.)

**D. Mr. Musk’s July 15, 2018 Tweets and Subsequent Apology**

35. On or about July 15, 2018, Mr. Musk saw video of Mr. Unsworth’s CNN International interview. (Lifrak Decl. Ex. 2 (Musk Dep. 26:13-27:15); Musk Decl. ¶ 19.)

Undisputed.

36. After watching the video, Mr. Musk googled Mr. Unsworth and learned that he was an older white man from the United Kingdom who lived in an area of Thailand known for child prostitution and sex trafficking. (Lifrak Decl. Ex. 2 (Musk Dep. 25:5-19; 42:18-43:8); Musk Decl. ¶ 22.)

Disputed to the extent the citation does not support the statement that the area where Unsworth spends time in Thailand is known for child prostitution, including because the citation does not support this statement, and disputed that Unsworth actually “lived” in that area; otherwise, undisputed.

In fact, Musk testified at his deposition that he did not know where Unsworth even lived at the time of the July 15 tweets. (Wilson Decl. Ex. 1 (Musk Dep. 10:17-19 (“English expat, lives in Chiang Rai or near Chiang Rai”), 42:21-25 (“...article

	<p>about Chiang Rai, which is where Mr. Unsworth is from, or was still living, or near there...”), 43:9-15 (“Q. Why Chiang Rai? A. That is where the caves were. Q. Not anything related to Mr. Unsworth? A. No. Just – Q. Just the caves’ location being at or near Chiang Rai? A. Yes.).)</p>
<p>37. In response to Mr. Unsworth’s CNN International interview, Mr. Musk posted a first tweet on July 15, 2018 that read: “Never saw this British expat guy who lives in Thailand (sus) at any point when we were in the caves. Only people in sight were the Thai navy/army guys, who were great. Thai navy seals escorted us in – total opposite of wanting us to leave.”</p> <p>(Musk Decl. ¶ 24, Ex. F.)</p>	<p>Undisputed that Musk published his first tweet regarding Unsworth on July 15, 2018 as stated; otherwise disputed.</p> <p>The citation and the factual record do not support the statement that the tweet was, at least solely, “in response to Mr. Unsworth’s CNN International interview,” because Musk was already “unhappy with all of the coverage that criticized his efforts with the tube, including the coverage that suggested that it was as PR stunt,” and “that was before Mr. Unsworth ever said a word to CNN.”</p> <p>(Wilson Decl. Ex. 6 (Teller Dep. 53:10-24, 88:13-21); <i>see also id.</i> Ex. 51; <i>id.</i> Ex. 48; <i>id.</i> Ex. 52; <i>id.</i> Ex. 61 (Musk July 11 tweet stating “This reaction has shaken my opinion of many people...”).)</p>

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3	38. By referring to Mr. Unsworth	Disputed, and not a material fact.
4	as “sus,” Mr. Musk did not intend	Musk’s actions, testimony, and judicial
5	to convey any specific facts capable	admissions demonstrate that he
6	of being proven true or false,	subjectively intended to convey that
7	instead he sought to convey that	Unsworth is a pedophile.
8	Mr. Unsworth was “just a weird	First, subjectively linking his tweet to
9	guy...looking for press.”	child prostitution, Musk testified in the
10	(Lifrak Decl. Ex. 2 (Musk Dep.	same declaration cited in support of this
11	154:12-24); Musk Decl. ¶ 25.)	proposition that “[a]fter watching the
12		video [of Unsworth’s July 13 interview,] I
13		googled Mr. Unsworth. I learned from my
14		search that he was a British expatriate who
15		lived in the Chiang Rai province of
16		Thailand. <i>I googled Chiang Rai and read</i>
17		<i>an article stating that it was a well-known</i>
18		<i>hot spot for child prostitution and sex</i>
19		<i>trafficking.”</i> (Emphasis added).
20		(Musk Decl. ¶ 22.)
21		Second, Musk’s declaration in the
22		above regard is consistent with his
23		deposition testimony regarding what he
24		did immediately prior to his July 15
25		tweets, and his subjective state of mind as
26		to why he issued the July 15 tweets,
27		including:
28		<ul style="list-style-type: none"> <li>• “[S]hortly before the tweet” “I did</li> </ul>

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just sort of a Google search on Chiang Rai and this article came up from ... one newspaper about how Chiang Rai was essentially the capital of sex trafficking in the world. That was also a data point.”

- “And then I was like – googled him, oh, he was like, lives in Thailand. Okay, *that’s pretty suspicious*. English expat, doesn’t seem to be – have been on the dive team, in a *very dodgy part of the world*.” (Emphasis added)

- To Musk, Thailand is “dodgy” because it “is a place where dodgy people go, in my experience. People who are often up to no good.”

- Those people who Musk testified went to Thailand for “bad reasons” included “Jared the Subway guy,” who “was going to Thailand for ... bad reasons” and was “engaged in pedophilia or something,” and “Gary Glitter” who “went to Thailand from England to have sex with underage kids,” as well as “another rock star that was into autoerotic asphyxiation in Thailand.”

- While Musk claimed “pedo guy” was a common insult in his youth in South

1  
2 Africa, he admitted he had “not used those  
3 words publicly” at any time.

4 • Musk did not undertake an  
5 investigation into Unsworth to prove that  
6 he was “just a weird guy looking for  
7 press,” but instead stated that “maybe  
8 there’s actually some merit to this ... And  
9 I was like, well, what if this is a real  
10 situation? What if what we have here is  
11 another Jeffrey Epstein... what if we have  
12 another Jeffrey Epstein on our hands? ...  
13 When I said ‘pedo guy,’ I didn’t mean that  
14 he was literally a pedophile; it was just an  
15 insult. But after getting this information  
16 from the investigator through Jared, I was  
17 like, well, maybe he is actually a  
18 pedophile.”

19 • “[Y]ou know, to be totally frank,  
20 [Unsworth] looked sort of like a pedo guy  
21 you know.” According to Musk, a “pedo  
22 guy look” means an “[o]ld angry white  
23 guy living in Thailand ... And why is he  
24 talking about shoving a submarine up my  
25 butt. ... And why is he living in Thailand  
26 with no apparent job or anything?”

27 (Wilson Decl. Ex. 1 (Musk Dep. 24:10-  
28 25:21, 27:21-28:5, 30:9-17, 35:25-40:11,

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42:4-43:8, 51:24-53:5, 62:4-64:15).)

Third, Musk's contemporaneous tweet later on July 15 stating "bet ya a signed dollar its true," tweeted in direct response to a tweet stating "he's calling the guy who found the children a pedo," reveals that Musk was referring to pedophilia in his tweets. No "bet" was needed if the words "pedo guy" merely described Unsworth's appearance. Moreover, Musk has never testified to using the lone word "pedo" as a childhood insult.

(Wilson Decl. Ex. 15.)

Fourth, Musk has admitted and asserted *in judicio* in his Motion to Dismiss that:

- He was "[r]eferencing Thailand's documented reputation, [when] Musk said that Unsworth was 'sus' for being a 'British expat guy who lives in Thailand,'" and "referring back to these suspicions, Musk dubbed Unsworth 'pedo guy'";
- Musk was "trading on Thailand's reputation";
- The Tenth Circuit has cited a "congressional committee report that identifies Thailand as a country experiencing significant problems with

sex tourism”;

• “[T]he reasonable reader would make this connection” citing to a California case “reasoning that the ‘prosecution did not [need to] explicitly tell the jury that defendant may have gone to Thailand to have sex with children’ because that ‘was implicit in the mere mention of Thailand’”; and

• “Musk’s conclusions about Unsworth were ‘inherently subjective’ because *they were based on his personal judgment and assessment of the fact that Unsworth was a British expat who lived in Thailand.*” (Emphasis added).

(Wilson Decl. Ex. 47 (Dkt. 30, Musk Motion to Dismiss, at 4, 7 15-16, 23).)

Fifth, even after the “sus,” “pedo guy,” and “bet ya a signed dollar its true” tweets, Musk consistently continued to represent publicly that he was subjectively conveying Unsworth was a “pedophile” when:

• On July 17, 2018, Musk tweeted his alleged “apology” citing directly to what he calls a “well written article” which itself states “the pedophile accusation

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wasn't quite random" because "Thailand has a reputation for sex tourism" and "Elon Musk called Unsworth a pedophile," and contains numerous comments from readers agreeing that Musk's July 15 tweets were an accusation of pedophilia, and Musk's "apology" did not in any way clarify that he allegedly only meant "weird guy."

- On August 28, 2018, he tweeted "You don't think it's strange he hasn't sued me? He was offered free legal services." Musk tweeted this in direct response to a tweet stating "your dedication to facts and truth would have been wonderful if applied to that time when you *called someone a pedo*." Musk continued tweeting in response: "Did you investigate at all? I'm guessing answer is no. Why?" "Did you investigate or not?" "So you actually did nothing & yet you imply you are a truth-seeker." (Emphasis added)

- Beginning August 29, 2018, Musk e-mailed to a BuzzFeed reporter, Ryan Mac, "Have you actually done any research at all," and referred to Unsworth



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as, among other things, a “child rapist” and “an old, single white guy from England who’s been traveling to or living in Thailand for 30 to 40 years, mostly Pattaya Beach, until moving to Chiang Rai for a child bride who was about 12 years old at the time,” and stating that “[t]here’s only one reason people go to Pattaya Beach. It isn’t where’d you go for caves, but it is where you’d go for something else. Chiang Rai is renowned for child sex-trafficking.”

- Additionally, after Mr. Mac made clear the above comments were on the record and would be published, Musk sent another e-mail stating “I suggest you ask Unsworth to describe his whole ~30 year history of visiting Thailand. What was he doing in Pattaya Beach for the better part of a decade when there are no caves of note in the area?”

(Wilson Decl. Exs. 14, 15, 17, 18, 19, 46.)

Sixth, Musk has privately demonstrated that he was subjectively serious about his accusation that Unsworth is a pedophile, as follows:

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- Musk’s chief of staff, Sam Teller, had never heard prior to reading the media coverage of Musk’s summary judgment motion that Musk meant anything other than “pedophile” by his tweets, despite working closely alongside Musk during the time when the tweets were made and being reported on;

- A draft internal company e-mail providing, among other things: “I understand that my recent behavior has probably embarrassed you and I’m sorry. I apologize to Vernon Unsworth and am reaching out to him to personally convey this, as well as my deep appreciation for his work in saving the kids,” without any reference to his tweets being meant as anything other than Unsworth being a pedophile;

- He hired and paid an investigator, James Howard (“Howard”), more than \$50,000.00 to surveil and investigate Unsworth to “get to the bottom of this situation; find out what is real or not,” out of alleged concern that “we have another Jeffrey Epstein on our hands”;

- Musk instructed his investigator and

Jared Birchall (“Birchall”), the manager of Musk’s family office who Musk put in charge of the investigation, to plant stories in the UK and Australian press suggesting that Unsworth is a pedophile, stating via e-mail that “[w]e would like you to immediately move forward with ‘leaking’ this information to the UK press. ...: Thailand is the world capital of pedophilia[;] This man has frequented Thailand since the 80’s – eventually leading to his divorce to his wife in the UK[;] While the guise of cave exploration is creative, there are amazing and extensive caving systems in many places throughout the world – not just in Thailand ...[;] He eventually [?] woman 30 years his minor – whom he met while she was a teenager[;] He had been going to Thailand for decades before marrying her. She wasn’t the first girl he met – and definitely not the first teenager he interacted with.”;

- In an August 24, 2018, e-mail, Birchall asked Howard, “Was his current wife the girl he finally settled on after a period of ‘exploring’ the world of

underaged Thai girls?”

- On August 25, 2018, Birchall e-mailed Howard offering “for successful confirmation of nefarious behavior there is an additional \$10k bonus.”

(Wilson Decl. Exs. 16<sup>5</sup>, 21, 22, 25, 33); *id.* Ex. 1 (Musk Dep. 62:4-64:15, 66:3-21); *id.* Ex. 2 (Birchall Dep. 109:18-110:6, 111:18-24, 114:23-115:21, 119:1-120:25, 125:13-126:3, 129:10-13, 163-64, 273:4-24); *id.* Ex. 6 (Teller Dep. 65:15-66:24); Musk Decl. ¶ 33.).

Seventh, before filing his motion for summary judgment, Musk had never taken any public action whatsoever to clarify his alleged subjective intent that he did not mean to accuse Unsworth of being a pedophile, despite rampant public reporting stating that Musk had in fact called Unsworth a “pedophile”:

- Musk received numerous “Google alerts” notifying him of that reporting;

- Musk and his team compiled pages of internet links to articles describing the July 15 tweets as an accusation of “pedophilia” or “pedophile” or “pedo,” but

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<sup>5</sup> Musk has withdrawn the improper confidentiality designation affixed to this document.

	<p>no clarification was issued;</p> <ul style="list-style-type: none"><li>• Musk and his team received numerous press inquiries describing his July 15 tweets as an accusation of “pedophilia” or “pedophile” or “pedo,” but no clarification was issued and instead they “ignored these inquiries.”</li></ul> <p>(Wilson Decl. Ex.1 (Musk Dep. 319:1-6); <i>id.</i> Ex. 43; <i>id.</i> Ex. 44; <i>id.</i> Ex. 45).)</p>
<p>39. Mr. Unsworth admitted in deposition that there was nothing about him in Mr. Musk’s first alleged defamatory tweet posted on July 15, 2018 that was false.</p> <p>Lifrak Decl. Ex. 1 (Unsworth Dep. 260:6-15).</p>	<p><u>Evidentiary Objection</u></p> <p>This statement consists of a legal conclusion rather than a statement of material fact as required by L.R. 56-1. The cited question called for a legal conclusion and was expressly withdrawn five lines later in the deposition; Musk cites to this testimony rather than stating as an unconverted fact that there is nothing false in the first defamatory tweet because, under the law, the tweets must be read together and in context to ascertain their meaning, as the Court properly held in its Order Denying Motion to Dismiss (Dkt. 42 at, <i>e.g.</i>, 9, 13 (“Defendant’s tweets were susceptible of being true or false because Plaintiff either is a pedophile or he is not.”))).</p>

	<p><u>Response</u></p> <p>Disputed.</p> <p>Musk’s citation does not support the alleged fact and was chosen to misrepresent Unsworth’s testimony; the questions at issue were asked and withdrawn multiple times in response to various objections, and the witness ultimately testified that “pedo” is false, that “Bet you a signed dollar it’s true” is false because “I’m not a pedo,” and specifically that “S-U-S, SUS, suspect, ‘Sorry, pedo guy,’ and ‘Bet ya a signed dollar it’s true’ are “[a]ll three harmful.”</p> <p>(Wilson Decl. Ex. 3 (Unsworth Dep. 259:10-266:6); <i>id.</i> Ex. 20 (Unsworth Rog. No. 1).)</p>
<p>40. In response to Mr. Unsworth’s CNN International interview, Mr. Musk posted a second tweet on July 15, 2018 that read: “Water level was actually very low &amp; still (not flowing) – you could literally have swum to Cave 5 with no gear, which is obv how the kids got in. If not true, then I challenge this dude to show final</p>	<p>Undisputed that Musk published his second tweet regarding Unsworth on July 15, 2018 as stated; otherwise disputed.</p> <p>The citation and the factual record do not support the statement that the tweet was, at least solely, “in response to Mr. Unsworth’s CNN International interview,” because Musk was already “unhappy with all of the coverage that criticized his</p>

<p>1 rescue video. Huge credit to pump 2 &amp; generator team. Unsung heroes 3 here.” 4 (Musk Decl. ¶ 26, Ex. G.) 5 6 7 8 9 10</p>	<p>efforts with the tube, including the coverage that suggested that it was as PR stunt,” and “that was before Mr. Unsworth ever said a word to CNN.”  (Wilson Decl. Ex. 6 (Teller Dep. 53:10- 24, 88:13-21); <i>see also id.</i> Ex. 51; <i>id.</i> Ex. 48; <i>id.</i> Ex. 52; <i>id.</i> Ex. 61 (Musk July 11 tweet stating “This reaction has shaken my opinion of many people...”)).)</p>
<p>11 41. Mr. Unsworth admitted in 12 deposition that there was nothing 13 about him in Mr. Musk’s second 14 alleged defamatory tweet posted on 15 July 15, 2018 that was false. 16 (Lifrak Decl. Ex. 1 (Unsworth 17 Dep. 263:5-264:9).)</p>	<p>Undisputed.</p>
<p>18 42. In response to Mr. 19 Unsworth’s CNN International 20 interview, Mr. Musk posted a third 21 tweet on July 15, 2018 that read: 22 “You know what, don’t bother 23 showing the video. We will make 24 one of the mini-sub/pod going all 25 the way to Cave 5 no problem. 26 Sorry pedo guy, you really did ask 27 for it.” 28</p>	<p>Undisputed that Musk published his third tweet regarding Unsworth on July 15, 2018 as stated; otherwise disputed.  The citation and the factual record do not support the statement that the tweet was, at least solely, “in response to Mr. Unsworth’s CNN International interview,” because Musk was already “unhappy with all of the coverage that criticized his</p>

<p>(Musk Decl. ¶ 27, Ex. H.)</p>	<p>efforts with the tube, including the coverage that suggested that it was as PR stunt,” and “that was before Mr. Unsworth ever said a word to CNN.”</p> <p>(Wilson Decl. Ex. 6 (Teller Dep. 53:10-24, 88:13-21); <i>see also id.</i> Ex. 51; <i>id.</i> Ex. 48; <i>id.</i> Ex. 52; <i>id.</i> Ex. 61 (Musk July 11 tweet stating “This reaction has shaken my opinion of many people...”)).)</p>
<p>43. The term “pedo guy” was a common insult used during Mr. Musk’s youth in South Africa, which he understood was synonymous with “creepy old man” and aimed at insulting one’s appearance and demeanor.</p> <p>(Lifrak Decl. Ex. 2 (Musk Dep. 51:21-52:17); Musk Decl. ¶ 28.)</p>	<p>Disputed, and not a material fact.</p> <p>For the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact No. 38, <i>supra</i>, and supplements it as follows:</p> <p>Musk did not say “creepy old man,” which is “aimed at one’s appearance and demeanor” – he said “pedo guy,” which both Musk and the world understood to mean “pedophile” as more fully set forth in response to Defendant’s Statement of Fact No. 38.</p> <p>Musk’s deposition explanation of why he called Unsworth a “pedo guy” also reveals that he meant “pedophile,” and included that he was “an angry old white</p>



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man” living in a “dodgy” part of the world  
“without a job,” the same part of the world  
where people go when they are “up to no  
good,” like “Jared, the Subway guy,” who  
was “engaged in pedophilia,” and “Gary  
Glitter” who “went to Thailand from  
England to have sex with underage kids”:

- Q. What did you learn about Mr. Unsworth from that time until the 15th of July when you tweeted about him?

- A. I am not sure of the exact dates here. ... is that when I referred to him as a sort of suspicious pedo guy ... But I did not really know much of anything of this guy except that he had gone on TV with a major news organization ... and you know, to be totally frank, looked sort of like a pedo guy, you know. And then I was like – googled him, oh, he was like, lives in Thailand. Okay, that’s pretty suspicious. English expat, doesn’t seem to be – have been on the dive team, in a very dodgy part of the world.

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- Q. What does a pedo guy look like?
- A. Old angry white guy living in

1 Thailand. ... It's a sort of a look. ... And  
2 why is he living in Thailand with no  
3 apparent job or anything? ...

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6 • Q: You used the phrase "dodgy."  
7 And I thought it was in reference to  
8 Thailand?

9 • A. Yes.

10 • Q. What did you mean, or what do  
11 you mean when you say that Thailand is  
12 dodgy?

13 • A. Thailand is a place where dodgy  
14 people go, in my experience. People who  
15 are often up to no good.

16 • Q. And how many people do you  
17 know that have been to Thailand that you  
18 would say were dodgy?

19 • A. Well, I would not say "know."  
20 "Heard of" perhaps is a better word.

21 • Q. Tell me how many you have  
22 heard of.

23 • A. I mean, there's like that – Jared,  
24 the Subway guy. You know, he went to  
25 Thailand a lot. ... Well, in his case, which  
26 is not to say all cases, he was, you know,  
27 engaged in pedophilia or something.  
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• Q. Other than Jared the Subway guy, do you know any other person that you would classify as a pedophile because of visits to Thailand?

• A. Gary Glitter ... He went to Thailand from England to have sex with underage kids.”

(Wilson Decl. Ex. 1 (Musk Dep. 24:10-30:25, 35:25-37:10, 39:15-25).)

Also as set forth and cited in response to Defendant’s Statement of Fact No. 38:

Musk has testified that he made the accusation only after googling Unsworth and Chiang Rai, which Musk says he then found was “a well-known hot spot for child prostitution and sex trafficking,” expressly took the position in his Motion to Dismiss that in using “sus” and “pedo guy” he was “trading on Thailand’s reputation,” which is, according to Musk, one of “a well-known hot spot for child prostitution and sex trafficking.”

When Musk “apologized” via Twitter, he referred to a “well-written article,” which itself states that Musk accused

	<p>Unsworth of being a pedophile.</p> <p>Musk made the “pedo guy” accusation, and then he set out to spend at least \$50,000.00 to prove that Unsworth was in fact, a pedophile. He went on to declare that Unsworth is a “child rapist” and married a “child bride who was about 12 years old at the time” in an e-mail to a reporter.</p> <p>Prior to seeking relief from this Court in his motion for summary judgment, Musk had never publicly declared that he meant anything other than “pedophile” despite many opportunities to do so via press inquiries stating the accusation to be one of pedophilia.</p>
<p>44. The term “pedo guy” as used and understood by Mr. Musk is not an accusation of acts of pedophilia.</p> <p><i>(Id.)</i></p>	<p>Disputed.</p> <p>Unsworth respectfully incorporates his citations to evidence and responses to Defendant’s Statement of Fact Nos. 38 and 43, including that he had never before used the term publicly and could not recall a specific occasion on which he had used the phrase at all, and that the first time Musk’s then chief of staff, Sam Teller, had ever heard it supposedly meant something other than pedophile was reading media</p>

1		about Musk’s motion for summary
2		judgment.
3		(Wilson Decl. Ex. 1 (Musk Dep. 52:8-
4		59:5); <i>id.</i> Ex. 6 (Teller Dep. 65:15-66:24).)
5	45. Mr. Musk did not intend to	Disputed, and not a material fact.
6	frame the third tweet to imply that	Unsworth respectfully incorporates his
7	Mr. Unsworth undertook acts of	citations to evidence and responses to
8	pedophilia [sic], and instead meant	Defendant’s Statement of Fact Nos. 38 and
9	to suggest that Mr. Unsworth	43-44.
10	“seem[ed] like a creepy old man.”	
11	(Lifrak Decl. Ex. 2 (Musk Dep.	
12	51:21-52:17; 198:3-10); Musk	
13	Decl. ¶ 29.)	
14	46. The definition of pedophile,	Disputed, and not a material fact.
15	as Mr. Musk understood the term,	Musk also testified that he defines
16	includes adults who “derive[]	pedophilia to include “sleeping with
17	sexual gratification from sexual	people below an age – below the age of
18	fantasies...involving a child.”	consent in the United States, essentially,”
19	(Lifrak Decl. Ex. 2 (Musk Dep.	which would include “[h]aving sexual
20	38:12-20); Compl. ¶ 78.)	relations, physical relations with a child
21		under the age of consent.”
22		(Wilson Decl. Ex. 1 (Musk Dep. 37:11-
23		38:22).)
24	47. In response to a tweet	Undisputed. The full tweet he
25	regarding Mr. Musk’s tweets, Mr.	responded to directly stated:
26	Musk posted a fourth tweet on July	“Oh, sorry, he’s calling the guy who
27	15, 2018 that read: “bet ya a signed	found the children <b>a pedo</b> . Real classy.”
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>dollar its true.” (Musk Decl. ¶ 30, Ex. I.)</p> <p>48. Mr. Musk testified that the fourth tweet was a “flippant comment” meant to convey that he “was not certain” about the prior tweets and found Mr. Unsworth “suspicious.” (Lifrak Decl. Ex. 2 (Musk Dep. 141:2-22, 140:16-25).)</p> <p>49. Mr. Musk deleted all four tweets within hours of their publication (Musk Decl. ¶ 31.)</p> <p>50. On July 18, 2018, Mr. Musk posted two tweets that read: “As this well-written article suggests, my words were spoken in anger after Mr. Unsworth said several untruths &amp; suggested I engage in a sexual act with the mini-sub, which had been built as an act of kindness &amp; according to specifications from the dive team leader,” and “Nonetheless, his actions against me do not justify my actions against him, and for that I</p>	<p>(Emphasis added). (Wilson Decl. Ex. 15.)</p> <p>Disputed that Musk did not intend to convey Unsworth is a pedophile, and not a material fact. Unsworth respectfully incorporates his citations to evidence and responses to Defendant’s Statement of Fact Nos. 38, 43-44, and 47.</p> <p>Undisputed, but not a material fact, and vague as to the exact number of hours.</p> <p>Undisputed, but incomplete. Musk testified that he was not referring to Unsworth, but instead to his companies, when he stated, “The fault is mine and mine alone,” and in fact agreed that his “apology” in the first July 17 tweet was “conveying blame on the part of Mr. Unsworth for what had happened and what [Musk] had said.” (Wilson Decl. Ex. 1 (Musk Dep. 106:10-107:24, 115:10-116:18).)</p>
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1 2 3 4 5	apologize to Mr. Unsworth and to the companies I represent as leader. The fault is mine and mine alone.” (Musk Decl. ¶ 32, Ex J.)	
6	<b>E. <u>Mr. Musk Retains an Investigator Who Reports on Mr. Unsworth.</u></b>	
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	51. On or around August 15, 2018, Jared Birchall, the president of Mr. Musk’s home office, retained James Howard, a private investigator and president of the investigation firm Jupiter Military & Tactical Systems, to conduct an investigation of Mr. Unsworth in the United Kingdom and Thailand on Mr. Musk’s behalf.  (Declaration of Jared Birchall (“Birchall Decl.”), ¶ 4; Birchall Decl. Ex. A.)	Undisputed, but incomplete.  Howard was engaged by Excession, LLC, Musk’s “family office,” and the investigation was undertaken at Musk’s request and for his benefit, with Birchall as the point of communication with Howard. Birchall <sup>6</sup> testified that Musk “asked me ... to gather information,” that it is “true” that “the reason for hiring Mr. Howard was because it was at the request and desire of Mr. Musk,” and Musk was referred to throughout the investigation by Howard as “the principal” or “the beneficiary.”  (Wilson Decl. Ex. 25; <i>id.</i> Ex. 2 (Birchall Dep. 20:17-18, 45:15-25, 48:6- 18, 48:19-21, 82:25-83:10, 118:24-119:3, 159:2-7, 240:12-241:4); <i>id.</i> Ex. 1 (Musk Dep. 67:22-24, 69:1-23, 176:23-177:6).)
26	52. Mr. Howard represented to	<u>Evidentiary Objection</u>

<sup>6</sup> Musk chose not to rely on Birchall’s deposition at all in this motion, and his testimony is addressed at length herein and in Plaintiff’s Statement of Additional Material Facts Precluding Summary Judgment, *infra*.

Mr. Birchall that he served in the United Kingdom Special Forces for eleven years and the United Kingdom Security Service (commonly known as MI5) for two years and had experience performing sensitive work for high profile clients, including billionaires Paul Allen and George Soros.

(Birchall Decl. ¶ 5, Ex. A.)

Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).

Response

Undisputed that Howard represented this to Birchall, but not a material fact and incomplete.

This was Birchall's "first investigator role or role in an investigation" and he considered himself an "inexperienced novice." According to Birchall, "there would have maybe been a slightly different process if someone said go out and identify the best investigator in the world to go and find information in Thailand," and Birchall never confirmed whether, in fact, Howard was in the Special Forces or had performed any work for Paul Allen or George Soros. His due diligence into Howard consisted solely of a Google search of his name and the name of his company, which Birchall testified to have been a "rudimentary" due diligence process. Further, a Google search of "James Howard Jupiter" (as of August 15, 2018) returns an article demonstrating that this individual had been sent to prison for



	<p>fraud for stealing more than £400,000 from his business.</p> <p>(Wilson Decl. Ex. 29; <i>id.</i> Ex. 2 (Birchall Dep. 50:16-51:7, 72:9-76:7).)</p>
<p>53. Mr. Birchall told Mr. Howard in writing that he and Mr. Musk “aren’t looking to frame anyone. If there is definitively no smoking gun, then let’s get the information necessary to make that determination and it is what it is.”</p> <p>(Birchall Decl. ¶ 13, Ex. D.)</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Birchall made the statements, but not a material fact and incomplete. Otherwise, disputed to the extent the statement is being made for the truth of the matter asserted therein, including because Birchall also:</p> <ul style="list-style-type: none"><li>• told Howard to “keep digging and dig creatively, extensively, and when possible, aggressively” “[b]ecause he had provided a lot of information at that point, and that information at times varied”;</li><li>• incentivized Howard by offering him a “\$10,000 bonus” “for successful confirmation of nefarious behavior”;</li><li>• sought information from Howard relating to Unsworth’s UK counsel and was aware that Howard purported to obtain information regarding Unsworth’s</li></ul>

	<p>legal counsel through a relationship with “another partner at the law firm,” and never tried to stop Howard from “trying to surveil matters regarding Mr. Unsworth and his lawyers”; and</p> <ul style="list-style-type: none"> <li>texted Howard that he and Musk would not “expose sources or any direct information that we shouldn’t have.”</li> </ul> <p>(Wilson Decl. Ex. 25; <i>id.</i> Ex. 2 (Birchall Dep. 131:16-25, 133:17-24).)</p>
<p>54. Through one of Mr. Musk’s corporations, Mr. Birchall ultimately paid Mr. Howard more than \$50,000 to perform the investigation.</p> <p>(Birchall Decl. ¶ 8.)</p>	<p>Undisputed, although the actual total amount paid remains undisclosed. Further, Birchall testified that he “absolutely” “had to get Musk’s authority to pay” Howard.</p> <p>(Wilson Decl. Ex. 2 (Birchall Dep. 78:10-15).)</p>
<p>55. On August 17, 2018, Mr. Howard wrote in an email to Mr. Birchall that “there is indeed an unpleasant undertone to some of his lifestyle choices” and “[t]here is no question that [Mr. Unsworth] ‘associates’ locally with Europeans who enjoy ‘Thai comforts’ that are not acceptable in a developed society.”</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that this was stated by Howard to Birchall, but not a material fact.</p> <p>On their face, these statements say nothing of pedophilia, child rape, or a child bride. Moreover, there is no truth to</p>

(Birchall Decl. ¶ 11, Ex. C.)

these statements, a fact known to Musk, who testified that “the investigator was not being truthful” and “these things subsequently turned out not to be correct.” And, as Musk testified, Tik being 23 years younger than Unsworth does not make him a “pedo guy,” because Musk “doesn’t think age difference matters. What matters is whether somebody is a consenting adult.”

(Wilson Decl. Ex. 3 (Unsworth Dep. 259:10-266:6, *id.* Ex. 4 (Vanessa Dep. 32:14-21); *id.* Ex. 1 (Musk Dep. 58:19-59:1, 62:10-63:1, 253:7-254:22); *id.* Ex. 5 (Woranan Ratrawiphukkun (“Tik”) Dep. 32:4-15).)

As more fully described in subsequent responses, Birchall conveyed to Musk prior to August 30 that they had received contradictory information from Howard regarding the age of Unsworth’s significant other (including that Unsworth met her when she was 18 or 19 at the youngest), and that Howard had “given exactly nothing verified.”

(Wilson Decl. Ex. 25; *id.* Ex. 24; *id.* Ex. 2 (Birchall Dep. 133:17-24, 189:2-190:17,

1		201:14-202:1, 256:13-260:6, 271:7-12).)
2		Unsworth more fully addresses the
3		information in Musk's and Birchall's
4		possession proving negligence and actual
5		malice in Unsworth's Statement of
6		Additional Material Facts Precluding
7		Summary Judgment at ¶¶ 14-64.
8	56. On telephone calls, including	<u>Evidentiary Objection</u>
9	before August 27, 2018, Mr.	Hearsay to the extent the statement is
10	Howard described a Thai news	being submitted for the truth of the matter
11	article that quoted Mr. Unsworth's	asserted therein. (FRE 802). Birchall's
12	Thai wife and reported that Mr.	alleged conversation with Howard about
13	Unsworth married his wife when	the contents of an article is not the
14	she was 18 or 19 years old, but that	required best evidence of said contents.
15	they met seven years earlier, which	(FRE 1002).
16	would imply that she was eleven or	<u>Response</u>
17	twelve years old at the time.	Undisputed that the youngest age that
18	(Birchall Decl. ¶ 12.)	Howard ever reported to Birchall or Musk
19		for Tik when she married Unsworth was
20		18 or 19 years old; otherwise disputed.
21		Musk has failed to provide admissible
22		evidence of the contents of the purported
23		article or of its existence, despite it being
24		the lynchpin of his purported belief that
25		Unsworth met (but did not begin an
26		intimate relationship with) Tik when she
27		was a minor. Moreover, Musk has failed to
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adduce any phone records of such a call taking place.

At all times, Howard's references to Unsworth's "wife" referred to his significant other, Tik. Unsworth has never married Tik and met Tik in London in February 2011 by chance when she was 32 years old. Tik is currently 40 years old. Unsworth had never been to Thailand prior to being invited by Tik in July 2011. Unsworth has never been married to a child.

(Wilson Decl. Ex. 23; *id.* Ex. 21; *id.* Ex. 3 (Unsworth Dep. 69:2-8, 70:3-4, 75:18-76:3); *id.* Ex. 20 (Unsworth Rog. No. 1); *id.* Ex. 5 (Tik Dep. 7:13-17, 10:5-25, 11:22-12:19, 32:4-15) (Birchall Dep. 16-19).)

Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall's possession proving negligence and actual malice in Unsworth's Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 14-64.

However, the following information was in Musk and Birchall's possession

prior to Musk's false accusations on Twitter on August 28 and/or to BuzzFeed on August 30 that Unsworth is a pedophile, had married a twelve-year-old child bride, and was a child rapist:

- Howard never reported that Unsworth was a child rapist;
- Birchall never reported to Musk that Unsworth was a child rapist;
- Even if Birchall is being truthful, Howard told Birchall that Unsworth and Tik got married, at the earliest, when she was 18/19 years old;
- Birchall never told Musk that Unsworth had a child bride, married Tik when she was a child or when she was twelve years old;
- On August 24, 2018, Howard reported in writing that "The Target and [Tik] have been married for 7 years, 28yrs gap between them both";
- On August 27, 2018, in response to Birchall asking "When did he marry his wife in Thailand? 2011?" and "When did he meet his wife in Thailand?" Howard reported in writing that it was verified that "Target met his wife in 2008 in her role as

Vice Presi[d]ent of the local commune”;

- On August 27, 2018, in response to Birchall asking “What was her age when they met?” Howard reported in writing that the “target is 63 years old. His wife we believe is 30 which would have put her at 18/19 when they *first met.*” (Emphasis added);

- Thus, based on the August 24 e-mail, Unsworth would have been 63 years old and Tik would have been 35 years old in August 2018, and they would have married when she was 28 years old;

- Thus, based on the August 27 e-mail, Tik would have been “18/19” when they met “in 2008,” and married when she was approximately 22-23 years old;

- On the morning of August 30, 2018, Howard provided a written report detailing that Unsworth’s “wife [Tik] we believe is 30 (we will confirm this in the next 48 hrs) which would have put her at 18/19 when they first met” (emphasis in original);

- Birchall testified that he would have reported to Musk within a day of receiving the reports on August 27 and August 30, and recognized that there was a “serious

discrepancy” in what was being reported regarding Tik’s age when she and Unsworth allegedly met and married, and Birchall “would have shared the information [with Musk] that was shared with” him on August 28 when he got it;

- Birchall acknowledged that Howard was “going back and forth with [him]. He would say 18 or 19 at one point. Then he would tell [him] 12 at one point. Then he would go 18 or 19 at one point. And then he would go to 12 at one point,” and that he “would have communicated everything communicated to me” to Musk; and

- Birchall’s written communications with Howard on September 6, 2018, state that he had not “seen the Thai article you referenced” and described what he had been told about it only as: “we were told numerous times that they were ‘married’ (or formed a relationship) in her late teens (you said 18), but that she was quoted in a newspaper saying they met 7 years prior.”

(Wilson Decl. Exs. 22-24; *id.* Ex. 2 (Birchall Dep. 99:3-100:7, 139:16-141:7, 149:14-23, 224:22-226:5, 242:19-243:17, 246:2-23, 248:23-264:2).)



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3	57. Within a day of receiving the	<u>Evidentiary Objection</u>
4	information, Mr. Birchall orally	Hearsay to the extent the statement is
5	reported to Mr. Musk Mr.	being submitted for the truth of the matter
6	Howard's description of a Thai	asserted therein. (FRE 802). Birchall's
7	news article that quoted Mr.	alleged conversation with Howard about
8	Unsworth's Thai wife and reported	the contents of an article is not the
9	that Mr. Unsworth married his wife	required best evidence of said contents.
10	when she was 18 or 19 years old,	(FRE 1002).
11	but that they met seven years	<u>Response</u>
12	earlier, which would imply that she	Undisputed that Musk was expressly
13	was eleven or twelve years old at	aware that the youngest age that Howard
14	the time.	ever reported for Tik when she married
15	(Birchall Decl. ¶ 12; Musk Decl.	Unsworth was 18 or 19 years old;
16	¶ 35.)	otherwise disputed.
17		Unsworth more comprehensively and
18		sequentially addresses the information in
19		Musk's and Birchall's possession proving
20		negligence and actual malice in
21		Unsworth's Statement of Additional
22		Material Facts Precluding Summary
23		Judgment at ¶¶ 14-64.
24		For the Court's convenience, Unsworth
25		incorporates his citations of evidence and
26		response to Defendant's Statement of Fact
27		No. 56, <i>supra</i> , and specifically affirms and
28		supplements his response to No. 56 with

highlighted evidence as follows:

- Birchall testified that he would have reported to Musk within a day of receiving the reports on August 27 and August 30, and recognized that there was “conflicting information” and a “serious discrepancy” in what was being reported regarding Tik’s age when she and Unsworth allegedly met and married, and Birchall “would have shared the information [with Musk] that was shared with” him on August 28 when he got it;

- Even if Birchall is being truthful, Howard told Birchall that Unsworth and Tik got married, at the earliest, when she was “18 or 19” years old, which Birchall acknowledged does not make her a child bride and “certainly not a 12-year-old child bride”;

- Birchall acknowledged that “[s]omeone being married at 18 does not suggest they are child rapist”;

- Birchall acknowledged that it is “true” that “if you go back and assume that [Tik] was seven years – that they had met seven years before they were married at age 18 or 19, that would be evidence

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	<p>that they <b>met</b> each other – <b>met</b> each other when she was 11 or 12 years old,” but “[t]o meet someone is not to have sexual intercourse with them,” (emphasis added);</p> <ul style="list-style-type: none"> <li>• Birchall testified that he never reported to Musk that Unsworth had married a child bride or was a child rapist;</li> <li>• Birchall acknowledged that “if you first meet ... at age 18 or 19, it is impossible that you got married seven years earlier than you met;” and</li> <li>• Birchall received multiple reports in writing from Howard stating that Unsworth “first <b>met</b>” his partner when she was 18 or 19. (Emphasis added).</li> </ul> <p>(Wilson Decl. Ex. 2 (Birchall Dep. 104:1-105:2, 105:19-108:10, 139:16-141:7, 150:13-17, 242:19-243:6, 246:2-23, 248:23-252:19).)</p>
<p>58. On August 27, 2018, Mr. Howard wrote to Mr. Birchall that Mr. Unsworth “is 63 years old. His wife we believe is 30 which would have put her at 18/19 when they first met. The target would have been 52 yrs old at the time. This is</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Howard wrote said statement to Birchall and that the youngest</p>

1 NOT verified but will be ASAP.”  
2 (Birchall Decl. ¶ 14, Ex. D.)  
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age Howard ever reported for Tik when  
she married Unsworth was when she was  
18 or 19 years old, but incomplete, and  
otherwise disputed to the extent the  
statement is being submitted for the truth  
of the matter asserted therein. And, indeed,  
Unsworth denies that the alleged reports  
are true.

Unsworth more comprehensively and  
sequentially addresses the information in  
Musk and Birchall’s possession proving  
negligence and actual malice in  
Unsworth’s Statement of Additional  
Material Facts Precluding Summary  
Judgment at ¶¶ 14-64.

For the Court’s convenience, Unsworth  
incorporates his citations of evidence and  
response to Defendant’s Statement of Fact  
Nos. 56 and 57, *supra*, but specifically  
affirms and supplements his responses  
with highlighted evidence as follows:

In the very same e-mail cited in support  
of this “uncontroverted fact,” it was  
reported “as fact” that Unsworth “met his  
wife in 2008 in her role as Vice President  
of the local commune.” At no time did  
Birchall or Musk ever receive any

	<p>information that, in 2008, Tik was a child, much less 11 or 12 years old, while she was the “Vice President of the local commune.” Further, in this very e-mail, Birchall had asked of Howard as follows, demonstrating his and Musk’s subjective state of mind as of August 27: “When did he marry his wife in Thailand? <b>2011?</b>” (Emphasis added).</p> <p>(Wilson Decl. Ex. 22)</p>
<p>59. On August 27, 2018, Mr. Howard also wrote to Mr. Birchall that Mr. Unsworth has been traveling to Thailand since the late 1980s and that Mr. Unsworth’s “behaviour is at best described as a ‘Manther’ – UK slang for the opposite of Cougar.”</p> <p>(<i>Id.</i>)</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Howard wrote the aforementioned statement, but not a material fact and incomplete. Disputed to the extent the statement is being submitted for the truth of the matter asserted therein. And, indeed (as with all others), Unsworth denies that the alleged reports are true.</p> <p>Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall’s possession proving negligence and actual malice in</p>

Unsworth's Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 14-64.

For the Court's convenience, Unsworth incorporates his citations of evidence and response to Defendant's Statement of Fact Nos. 56-58, *supra*, but specifically affirms and supplements his responses with highlighted evidence as follows:

First, Howard was expressly "in the process of verifying" the statement regarding "manther," and this statement does not support "child rapist" or "child bride."

Second, the statement regarding the 1980s is incomplete, as the Howard e-mail stated only that "The target has been traveling on and off to Thailand *for cave exploration* since the late 1980s." (Emphasis added). In any event, Unsworth did not travel to Thailand prior to 2011.

Third, contrary to Musk's e-mail to BuzzFeed stating that Unsworth has "been traveling to or living in Thailand for 30 to 40 years," this same e-mail from Howard stated as verified fact (albeit incorrectly) that "[t]he target moved permanently to

1		Thailand in the [sic] 2010.”
2		(Wilson Decl. Exs. 22, 19)
3	60. Before August 28, 2018, Mr.	<u>Evidentiary Objection</u>
4	Birchall orally relayed to Mr. Musk	Hearsay to the extent the statement is
5	the contents of Mr. Howard’s	being submitted for the truth of the matter
6	phone calls and his August 17 and	asserted therein. (FRE 802).
7	August 27, 2018 emails, including	<u>Response</u>
8	Mr. Howard’s reports that Mr.	Undisputed that Howard engaged in the
9	Unsworth associated with	aforementioned conduct and that Musk
10	Europeans who engage in improper	was aware of the information in Howard’s
11	sexual conduct in Thailand, and has	August 27 email reporting that Unsworth
12	been traveling to Thailand since the	met Tik when she was 18 or 19 years old,
13	1980s.	but not a material fact and incomplete.
14	(Birchall Decl. ¶ 15; Musk Decl.	Disputed to the extent the statement is
15	¶ 35.)	being submitted for the truth of the matter
16		asserted therein. And, indeed, Unsworth
17		denies that the alleged reports are true.
18		Unsworth more comprehensively and
19		sequentially addresses the information in
20		Musk and Birchall’s possession proving
21		negligence and actual malice in
22		Unsworth’s Statement of Additional
23		Material Facts Precluding Summary
24		Judgment at ¶¶ 14-64, with lack of verified
25		information and same being
26		communicated to Musk specifically
27		addressed in ¶¶ 33-37.
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2 For the Court's convenience, Unsworth  
3 incorporates his citations of evidence and  
4 response to Defendant's Statement of Fact  
5 Nos. 56-59, *supra*, but specifically affirms  
6 and supplements his responses with  
7 highlighted evidence as follows:

8 As set forth above, the August 27, 2018,  
9 report fatally condemns Musk's  
10 accusations of child rape and a child bride;  
11 further, while still categorically false as set  
12 forth above, "improper sexual conduct" is  
13 not *ipso facto* "child rape" and "child  
14 bride." While inapplicable to Unsworth,  
15 Birchall acknowledged that "there is a big  
16 difference" "between prostitution and  
17 child prostitution."

18 Further, Birchall was subjectively  
19 aware that he had not received any  
20 substantiation for any of Howard's claims,  
21 even as of September 6, 2018, when he  
22 wrote to Howard:

- 23 • "Some (all?) of this information has  
24 now proven to be wrong";  
25 • "It doesn't seem too difficult to get  
26 something verifying her age ... These  
27 things are vital simply for us to know we  
28 are getting legitimate information";



1 • “[L]et’s focus on what we can do  
2 now to be productive, move toward the  
3 objective and verify some of the key data.  
4 Do you have a definitive way to confirm  
5 her age? Have the guys found anything  
6 new in Pattaya?”

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8 Birchall was subjectively aware that he  
9 had not received any substantiation for any  
10 of Howard’s claims, even as of September  
11 12, 2018, when he wrote to Howard: “It  
12 seems near impossible that this guy has  
13 walked in the circles that he has, spent as  
14 much time there as he has and hasn’t left  
15 some trail of his devious behavior. We  
16 must find that trail.”

17 Birchall was subjectively aware that he  
18 had not received any substantiation for any  
19 of Howard’s claims, even as of September  
20 17, 2018, when he wrote to Howard:  
21 “Also, what was the information source  
22 that suggested Unsworth has been going to  
23 Thailand since the 80’s?”

24 Birchall was subjectively aware that he  
25 had not received any substantiation for any  
26 of Howard’s claims, even as of September  
27 18, 2018, when he wrote to Howard: “You  
28 mentioned several days ago that you

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would be sitting down with your embassy contact to get documented proof of Unsworth's travel over those 6 years that you indicated he spent time in Pattaya. Did that happen? This is an important piece of verification."

Birchall was subjectively aware that he had not received any substantiation for any of Howard's claims, even as of September 20, 2018, when he wrote to Howard: "You've made some pretty specific claims that contradict his legal filing. But at this point we have nothing to confirm any of them. We need something, anything that can support your claims."

Birchall was subjectively aware that he had not received any substantiation for any of Howard's claims, even as of October 2, 2018, when he wrote to Howard: "James – go back and review the information you've provided aside from the initial info. You've just about given us nothing. And you have given exactly nothing verified."

Birchall admitted that he relayed all significant information from the investigation to Musk, including the unverified nature of the reports.

1		(Wilson Decl. Exs. 24-25; <i>see also id.</i>
2		Ex. 2 (Birchall Dep. 89:1-25, 133:17-24,
3		173:21-184:12, 201:13-202:1, 232:25-
4		233:2).)
5	61. After Mr. Howard sent the	<u>Evidentiary Objection</u>
6	August 27, 2018 email to Mr.	Hearsay to the extent the statement is
7	Birchall, he again represented on a	being submitted for the truth of the matter
8	phone call to Mr. Birchall that there	asserted therein. (FRE 802). Intentionally
9	was evidence suggesting that Mr.	vague and misrepresentative as to “began
10	Unsworth met and began a	a relationship with his wife.”
11	relationship with his wife when she	<u>Response</u>
12	was eleven or twelve. Mr. Birchall	Disputed. Unsworth more sequentially
13	reported this information to Mr.	addresses the information in Musk and
14	Musk.	Birchall’s possession proving negligence
15	(Birchall Decl. ¶ 16.)	and actual malice in Unsworth’s Statement
16		of Additional Material Facts Precluding
17		Summary Judgment at ¶¶ 14-64.
18		For the Court’s convenience, Unsworth
19		incorporates his citations of evidence and
20		response to Defendant’s Statement of Fact
21		Nos. 56-60, <i>supra</i> , but specifically affirms
22		and supplements his responses with
23		highlighted evidence as follows:
24		First, this unequivocal statement in
25		Birchall’s September 13, 2019, declaration
26		is inconsistent with his sworn deposition
27		testimony just three days earlier on
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September 10, 2019, when he stated that he and Musk shared the “same concern” as to “whether they were getting the truth from Mr. Howard,” and they “had had that concern ever since his data being provided to [Birchall] started to change,” but that Howard’s information as to Tik’s age **“continued to waffle even after the 27th.”** (Emphasis added).

Second, the August 30, 2018, written report is entirely consistent with the August 24, 2018, and August 27, 2018, written report providing that Tik was 18/19 when she first met Unsworth:

- On August 24 it was reported that “The target and Woranun [Tik] have been married for 7years, 27 yrs gap between them both.”
- On August 27 it was reported “as fact” that Unsworth “met his wife in 2008 in her role as Vice President of the local commune” and that it was believed Tik “is 30 which would have put her at 18/19 when they first met.”
- On August 30, it was reported that Tik is “we believe 30 (**we will confirm this in the next 48hrs**) which would have put

her at 18/19 when they first met.”  
(Emphasis in original).

Third, even Birchall’s written statements to Howard on August 27, 2018, and after the BuzzFeed article on September 4, 2018, demonstrate his subjective awareness that, even if he had heard Tik and Unsworth might have **met** when she was twelve or thirteen years old, they did not “form a relationship” until she was, at the earliest, 18 or 19 years old:

- On August 27, in the same email where it was reported that Unsworth met Tik in 2008 and she is believed to currently be 30 years old, Birchall had asked Howard “When did he marry his wife in Thailand? 2011?”

- On September 6, Birchall recounted what he allegedly had previously been told by phone by Howard, stating “we were told numerous times that they were **‘married’ (or formed a relationship)** in her late teens (**you said 18**), but that she was quoted in a newspaper saying they **met 7 years prior.**” (Emphasis added).

Again, as Birchall acknowledged, and while it was never substantiated that

	<p>Unsworth met Tik when she was 11, 12, or 13, and he was in fact told on numerous occasions they met when she was 18 or 19, <b>meeting someone</b> is not the same thing as <b>marrying or raping someone</b>.</p> <p>(Wilson Decl. Exs. 22-24; <i>id.</i> Ex. 2 Birchall Dep. 137:10-138:4, 150:13-17).)</p>
<p style="text-align: center;"><b>F. <u>Mr. Musk's August 28, 2018 Tweet</u></b></p>	
<p>62. On August 28, 2018, in response to a tweet from Drew Olanoff, a reporter for TechCrunch, that Mr. Musk's "dedication to facts and truth would have been wonderful if applied to that time when you called someone a pedo," Mr. Musk tweeted "You don't think it's strange he hasn't sued me? He was offered free legal services."</p> <p>(Musk Decl. ¶ 38, Ex. K.)</p>	<p>Undisputed.</p>
<p>63. At the time he sent the August 28, 2018 tweet, Mr. Musk had knowledge of Mr. Howard's initial findings, as they were relayed to him by Mr. Birchall, including Mr. Howard's reports</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802). Mr. Birchall's alleged conversation with Howard about the contents of an article or</p>

1 that that Mr. Unsworth associated  
2 with Europeans who engage in  
3 improper sexual conduct in  
4 Thailand, has been traveling to  
5 Thailand since the 1980s, and that  
6 there was a report Mr. Unsworth  
7 met and began a relationship with  
8 his wife when she was eleven or  
9 twelve.

10 (Musk Decl. ¶ 39.)  
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report is not the required best evidence of  
said contents. (FRE 1002). Intentionally  
vague as to what “findings” means with  
respect to verified information and the use  
of “began a relationship.”

Response

Disputed.

Unsworth more comprehensively and  
sequentially addresses the information in  
Musk and Birchall’s possession proving  
negligence and actual malice in  
Unsworth’s Statement of Additional  
Material Facts Precluding Summary  
Judgment at ¶¶ 14-64.

For the Court’s convenience, Unsworth  
incorporates his citations of evidence and  
response to Defendant’s Statement of Fact  
Nos. 56-61, *supra*, but specifically affirms  
and supplements his responses with  
highlighted evidence as follows:

While Musk may have received some  
vague, false, and unsubstantiated  
information amounting, at most, to an  
unverified report that Unsworth **met** Tik  
when she was approximately 12 years old,  
Musk was also told about a litany of  
written information from Howard that

Unsworth **met** Tik when was was 18 or 19:

- Birchall testified that he would have reported to Musk within a day of receiving the reports on August 27 and August 30, and recognized that there was at least “conflicting information” and a “serious discrepancy” in what was being reported regarding Tik’s age when she and Unsworth allegedly met and married, and Birchall “would have shared the information [with Musk] that was shared with” him on August 28 when he got it; and

- As a result, both Birchall and Musk shared the “same concern” as to “whether they were getting the truth from Mr. Howard,” and they “had had that concern ever since his data being provided to [Birchall] started to change.”

In short, in addition to both Musk’s subjective doubts of the truth and possession of at least conflicting information, the information identified in this purportedly “uncontroverted fact” that Unsworth met and began a relationship with his wife when she was eleven or



	<p>twelve years old does not establish the accusations in this case.</p> <p>(Wilson Decl. Ex. 2 (Birchall Dep. 105:19-108:10, 137:10-138:4, 139:16-141:7).)</p>
<p><b>G. <u>The Investigator Reports More Detailed Findings to Birchall</u></b></p>	
<p>64. In late August 2018, Mr. Howard told Mr. Birchall in telephone conversations that he learned that Mr. Unsworth spent significant time in Pattaya Beach, which is well known for prostitution and sex tourism, that Mr. Unsworth associated with other European expatriates who engaged in inappropriate sexual conduct in Thailand, and that that Mr. Unsworth was unpopular at the Thai Cave Rescue because others regarded him as “creepy.”</p> <p>(Birchall Decl. ¶ 17.)</p>	<p><u>Evidentiary Objection</u></p> <p>Vague and irrelevant (FRE 401). Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Disputed, incomplete, and not a material fact.</p> <p>Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall’s possession proving negligence and actual malice in Unsworth’s Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 14-64, with lack of verified information and same being communicated to Musk specifically addressed in ¶¶ 33-37.</p> <p>For the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact</p>

Nos. 56-61 and 63, *supra*, but specifically affirms and supplements his responses with highlighted evidence as follows:

First, all of these accusations are false. Unsworth has *never been to Pattaya or Pattaya Beach*, does not associate with European expatriates who engage in inappropriate sexual conduct in Thailand, and was not unpopular during the Thai Cave Rescue.

(Wilson Decl. Ex. 3 (Unsworth Dep. 77:10-24); *id.* Ex. 20 (Unsworth Rog. 13); *id.* Ex. 5 (Tik Dep. 14:12-18, 35:9-36:4); *id.* Ex. 4 (Vanessa Dep. 14:11-21, 32:14-21).)

Second, this portion of Birchall's September 13, 2019 declaration contradicts his sworn deposition testimony from just three days earlier on September 10, 2019, in material respects:

- Birchall testified that while alleged conversations with Howard regarding Pattaya Beach occurred "prior to the email preliminary report on August 30th," he acknowledged that it is "right" "there is no written reference in any of his emails or reports, prior to the August 30<sup>th</sup>, report that

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references Pattaya Beach,” and he cannot “with certainty” “give you that date” that he claims to have “had a conversation about Pattaya Beach prior to August the 30th.”

(Wilson Decl. Ex. 2 (Birchall Dep. 183:4-185:22).)

Third, all written reports with respect to whether Unsworth spent time in Pattaya were expressly unverified and equivocal, this was known to Musk and Birchall, and they were in fact still seeking any corroborative information after Musk’s accusations to BuzzFeed:

- Birchall acknowledged that he is unaware of receiving more than one written report regarding Unsworth and Pattaya Beach;
- Birchall acknowledged that the only information Musk could have received came directly from him;
- The sole written report on the issue stated that “Prior to meeting his current wife **we believe** that Mr Unsworth was living in the Pattaya Beach ... **We are in the process of verifying this information.**” (Emphasis added).

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- The sole written report on the issue stated that “**If this is the case that Mr Unsworth chose to live in Pattaya Beach** before moving to Northern Thailand . . . .” (Emphasis added).

- The sole written report on the issue stated, “**Can we confirm** that Mr Unsworth was a frequent visitor to Pattaya – **This can be established** by checking old visa applications that he would have made on entering Thailand.” (Emphasis added).

- Birchall acknowledged that when the August 30, 2018, report was sent, Howard “did state that they were in the process of verifying that,” i.e., the travel of Unsworth;

- Birchall acknowledged that “there had been no confirmation as a matter of fact that Unsworth lived in Pattaya Beach,” stating that “it definitely questions the veracity of that. Though his – the conversations you had with him much more affirmative [sic].”

- Birchall acknowledged that Howard had “[n]ot unequivocally” “prior to August 30th ... stated ... ‘We know that Vernon Unsworth lived in Pattaya Beach most of

1 the time that he visited Thailand.”

2 • Birchall acknowledged that “[t]here  
3 were inconsistencies” regarding Howard’s  
4 “portrayal of Unsworth’s activity in  
5 Pattaya Beach and other activities ....”

6 • Even as of September 3, 2018,  
7 Howard wrote to Birchall: “Jim I have  
8 deployed 3x investigators to Pattaya ...  
9 My plan is to wait for the Pattaya evidence  
10 then package it up for the x2 journalist in  
11 Australia & x 2 in the UK ... **Pattaya will**  
12 **take some time probably 7 days** ... Can  
13 you authorise a further 20k USD? This is  
14 to cover the UK surveillance and Pattaya  
15 investigation.”

16 • As of September 4, 2018, Birchall  
17 demonstrated his awareness that  
18 Unsworth’s (false) travel to Pattaya was  
19 unverified and that any specific conduct  
20 remained unknown, stating, “Can you  
21 confirm the hotel names in Pattaya? And  
22 you said 2 of them are considered standard  
23 destinations for expats with bad intentions,  
24 correct?”

25 • Howard responded that “our goal is  
26 to get evidence from the penthouse which  
27 is obviously a big win. I’ll keep you  
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	<p>updated.”</p> <ul style="list-style-type: none"> <li>• Birchall acknowledged during his deposition that as of “early September” records about “hotel stays in Pattaya and all that stuff ... didn’t materialize ...”</li> <li>• Birchall acknowledged that as of August 30, it was “[t]rue that Howard had “not stated as a matter of fact that Vernon Unsworth ever lived in Pattaya Beach,” while insisting that “there are numerous phones calls between each of these [written] correspondence where he is much more affirmative in his beliefs of her age and of Unsworth’s activities and of his time spent in Pattaya Beach.”</li> <li>• Birchall acknowledged that it was not until September 4, 2018, that Howard claimed to have “contacts in the British Embassy that had ... travel records for Mr. Unsworth having frequented” certain alleged hotels in Pattaya.</li> </ul> <p>(Wilson Decl. Ex. 2 (Birchall Dep. 136:6-21, 169:1-170:22, 176:12-177:1, 177:19-181:23, 183:4-190:24, 201:13-202:1); <i>id.</i> Ex. 23, 25.</p>
65. Before the evening of August	<u>Evidentiary Objection</u>

30, 2018, Mr. Birchall had also relayed to Mr. Musk Mr. Howard's findings that Mr. Unsworth met his wife when she was eleven or twelve, that Mr. Unsworth traveled to Thailand since the 1980s and that he frequented Pattaya Beach which is well known for prostitution and sex tourism, and that Mr. Unsworth was unpopular at the rescue site because other rescue workers thought that he was "creepy."

(Birchall Decl. ¶¶ 14-17, 19; Musk Decl. ¶ 35.)

Vague and irrelevant (FRE 401). Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802). Birchall's alleged conversation with Howard about the contents of an article is not the required best evidence of said contents. (FRE 1002).

Response

Disputed, incomplete, and not a material fact.

Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall's possession proving negligence and actual malice in Unsworth's Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 14-64.

For the Court's convenience, Unsworth incorporates his citations of evidence and response to Defendant's Statement of Fact Nos. 56-61 and 63-64, *supra*, but specifically affirms and supplements his responses with highlighted evidence as follows:

The cited evidence does not support the contention that Howard had made any

	<p>“findings” regarding these purported facts, including that Unsworth met his wife when she was eleven or twelve, that he had long traveled to Thailand or Pattaya, or that he was unpopular at the rescue. Thus, the evidence likewise does not support that Birchall communicated the non-existent findings to Musk.</p>
<p>66. On August 30, 2018, Mr. Howard sent to Mr. Birchall a formal preliminary report of his investigation of Mr. Unsworth. (Birchall Decl. ¶ 18, Ex. E.)</p>	<p>Undisputed.</p>
<p>67. Mr. Howard’s August 30, 2018 preliminary report included the following statements:</p> <ul style="list-style-type: none"> <li>• “Mr. Unsworth has been a frequent visitor to Thailand since the 1980’s. Prior to meeting his current wife we believe that Mr. Unsworth was living in the Pattaya Beach...Pattaya Beach is synonymous with prostitution and scam artists. We are in the process of verifying this information which</li> </ul>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed to the extent the preliminary report made the aforementioned statements (at least in part), but a gross distortion of the written report, incomplete, and not a material fact. Disputed to the extent the contents of the statements are being submitted for the truth of the matter asserted therein.</p>



was mentioned to the lead investigator by Mr. Unsworth's mother-in-law."

- "Mr. Unsworth has been described to our investigation team by other UK volunteers attached to the Cave Rescue team as a 'Manther' slang for an older man with a taste for younger women."

- "The sexpat whore-mongers his way through the go-go bars of Thailand. His only other friends are his sexpat peers. Peek-density occurs in and around Pattaya – Thailand's sin city."

- "[S]ome of the UK and Dutch divers who also volunteered stated that Mr. Unsworth was not a popular or particularly liked man in the Cave Rescue Team. When pushed as to why, they simply replied 'Creepy'."

- "Mr. Unsworth is an unpopular loner."

(Birchall Decl. ¶ 19, Ex. E.)

Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall's possession proving negligence and actual malice in Unsworth's Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 14-64.

For the Court's convenience, Unsworth incorporates his citations of evidence and response to Defendant's Statement of Fact Nos. 56-61 and 63-64 but further states as follows:

First, each of these claims are categorically false.

(Wilson Decl. Ex. 3 (Unsworth Dep. 69:2-8, 70:3-4, 75:18-76:3); *id.* Ex. 20 (Unsworth Rog. Nos. 1, 13); *id.* Ex. 5 (Tik Dep. 14:12-18, 35:9-36:4); *id.* Ex. 4 (Vanessa Dep. 14:11-21, 32:14-21)); *id.* Ex. 10 (Harper Decl. ¶ 8); *id.* Ex. 11 (Ellis Decl. ¶¶ 9, 12); *id.* Ex. 12 (Stanton Decl. ¶¶ 5, 8); *id.* Ex. 13 (Svasti Decl. ¶¶ 4-5).

Second, Musk falsely conveys to the Court that Howard stated that Unsworth was a "sexpat [who] whore-mongers his way through the go-go bars of Thailand.

	<p>His only other friends are his sexpat peers.” That is false. Howard’s August 30 report states as follows: <b>“If this is the case that Mr Unsworth choose [sic] to live in Pattaya Beach ... then it would be a strong indicator as to his lifestyle interests. If we can establish that Mr Unsworth was a regular visitor to this part of Thailand</b> which is not known for its extensive cave networks <b>then this is something that may support the assumption that he is a ‘Sexpat.’”</b> In the next paragraph, the report defined that concept, explaining that <b>“The sexpat whore-mongers ...”</b> (Emphasis added). (Wilson Decl. Ex. 23.)</p>
<p>68. An employee of one of Mr. Musk’s companies who was present at the Thai Cave Rescue, informed Mr. Musk that the dive team did not want Mr. Unsworth at the rescue site.</p> <p>(Lifrak Decl. Ex. 2 (Musk Dep. 247:24-248:16); Musk Decl. ¶ 37.)</p>	<p><u>Evidentiary Objection</u></p> <p>Vague and irrelevant (FRE 401). Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed, but not a material fact. Disputed to the extent the statement is being submitted for the truth of the matter asserted therein.</p> <p>First, these claims are categorically</p>

	<p>false.</p> <p>(Wilson Decl. Ex. 10 (Harper Decl. ¶ 8); <i>id.</i> Ex. 11 (Ellis Decl. ¶¶ 9, 12); <i>id.</i> Ex. 12 (Stanton Decl. ¶¶ 5, 8); <i>id.</i> Ex. 13 (Svasti Decl. ¶¶ 4-5).)</p> <p>Second, this has no connection with alleged pedophilia, child rape, or child brides.</p>
<p style="text-align: center;"><b>A. <u>Mr. Musk’s “Off-the-Record” Emails to BuzzFeed</u></b></p>	
<p>69. On August 6, 2018, counsel for Mr. Unsworth allegedly sent a demand letter to Mr. Musk.</p> <p>(Compl. Ex. H.)</p>	<p>Undisputed, excepting “allegedly.”</p> <p>(Wilson Decl. Ex. 60.)</p>
<p>70. On August 29, 2018, counsel for Mr. Unsworth publicly tweeted a copy of his demand letter to Mr. Musk’s twitter account.</p> <p>(Lifrak Decl. Ex. 22.)</p>	<p>Undisputed, but not a material fact.</p>
<p>71. On August 29, 2018, Ryan Mac, a reporter with BuzzFeed News, emailed Mr. Musk seeking a comment for a story about a demand letter sent by Mr. Unworth’s [sic] counsel to Mr. Musk.</p> <p>(Musk Decl. ¶ 40, Ex. L.)</p>	<p>Undisputed.</p>
<p>72. On the evening of August 30,</p>	<p>Undisputed.</p>

1 2 3 4	2018 Mr. Mac sent a follow up email to Mr. Musk. (Musk Decl. ¶ 41, Ex. L.)	
5 6 7	73. On August 30, 2018, Mr. Musk sent two emails to Mr. Mac. (Musk Decl. ¶ 42, Exs. L-M.)	Undisputed.
8 9 10 11 12 13 14 15 16 17 18 19	74. Mr. Musk's first email to Mr. Mac stated "Off the record" at the top of the message. (Musk Decl. ¶ 43, Ex. L.)	Disputed, and not a material fact. The e-mail referenced is dated August 30, 2018. Contrary to Musk's testimony, Musk's first e-mail to Mr. Mac was on August 29, 2018, never stated "Off the record," and instead stated: "Have you actually done any research at all? For example, you incorrectly state that he is a diver, which shows that you know essentially nothing and have not even bothered to research basic facts." (Musk Decl. Ex. L; Wilson Decl. Ex. 19).
20 21 22 23 24 25 26 27 28	75. Mr. Musk did not authorize BuzzFeed to publish his email or its contents. (Lifrak Decl. Ex. 2 (Musk Dep. 173:23-175:11); Musk Decl. ¶ 43.)	Disputed. Unsworth more comprehensively and sequentially addresses Musk's authorization, encouragement, and intention, as well as the foreseeability, that Mr. Mac would publish his e-mails or their contents in Unsworth's Statement of Additional Material Facts Precluding

	<p>Summary Judgment at ¶¶ 65-84.</p> <p><i>Prior to publication</i> of Musk’s e-mails or their contents by Mr. Mac or BuzzFeed, Mr. Mac responded to Musk’s “child rapist” and “child bride” e-mail, advising that he “didn’t agree for the conversation to be off the record, but appreciate the response,” and asked a series of follow up questions.</p> <p>Rather than advise Mr. Mac that he was “not authorize[d]” to publish Musk’s unilaterally designated e-mail as “off the record,” Musk stated: “If you want to publish off the record comments and destroy your journalistic credibility, <b>that’s up to you.</b>” (Emphasis added).</p> <p>(Musk Decl. Ex. L; Wilson Decl. ¶ Ex. 19.)</p>
<p>76. Mr. Musk did not intend for BuzzFeed to publish the contents of his email, especially without independent verification.</p> <p>(Lifrak Decl. Ex. 2 (Musk Dep. 173:23-175:11); Musk Decl. ¶ 43.)</p>	<p>Disputed, and whether Musk wanted it investigated before being published is not a material fact.</p> <p>Unsworth more comprehensively and sequentially addresses Musk’s authorization, encouragement, and intention, as well as the foreseeability, that Mr. Mac would publish his e-mails or their contents in Unsworth’s Statement of</p>

Additional Material Facts Precluding  
Summary Judgment at ¶¶ 65-84.

For the Court's convenience, Unsworth incorporates his citations of evidence and response to Defendant's Statement of Fact No. 75, but further states as follows:

First, Musk testified that he expected and intended that the accusations he made would be published whether true or false:

- Q: ... I've gotten this information from the investigator. I don't know whether it's true or not. But you wanted Ryan Mac to investigate it. Is that a fair characterization of your testimony?

- A. Yeah.

- Q. And if he discovered that it was true, you *fully would have expected him to publish that, true?* (Emphasis added)

- A. I have expected him to, yes, take some action if – if this – you know, Unsworth was up to no good, to bring that to light.

- Q. Publish it and let folks know, right?

- A. If true.

- Q. That's what you thought when you sent it to him?

• A. Yes.

• Q. *And if he did not find any evidence to support it, did you likewise expect that he would report that.* That he had looked into it and could not find any substantiation?

• A. Yes.

(Wilson Decl. Ex. 1 (Musk Dep. 189:7-190:6) (emphasis added).)

Second, Musk was contemporaneously attempting to plant stories in the UK and Australian press suggesting Unsworth was a pedophile:

• On August 28, 2019, Birchall e-mailed to Howard as follows: “**We** would like you to immediately move forward with ‘leaking’ this information to the UK press. Obviously must be done very carefully. The line of thinking at this point is as follows: [1] Thailand is the world capital of pedophilia [2] This man has frequented Thailand since the 80’s – eventually leading to his divorce to his wife in the UK. [3] While the guise of cave exploration is creative, there are amazing and extensive caving systems in many places throughout the world – not

1 just in Thailand. Even the most ardent  
2 supporter of Thai food doesn't eat Thai  
3 food every day. [4] He eventually woman  
4 [sic] 30 years his minor – whom he met  
5 while she was a teenager. [5] He had been  
6 going to Thailand for decades before  
7 marrying her. She wasn't the first girl he  
8 met – and definitely not the first teenager  
9 he interacted with. **Share the facts and as**  
10 **you said, that should be enough for a**  
11 **story.** But **we'd** like to make this happen  
12 immediately.” (Emphasis added)

13 • On August 28-29, 2018, Birchall  
14 and Howard texted, in relevant part, as  
15 follows:

16 - Birchall: “What is the  
17 timeline?”

18 - Howard: “Jim timeline is  
19 ASAP ... It has to appear organic &  
20 not contrived. Priority is to divert the  
21 story away from the principal and let  
22 the UK tabloids develop there [sic]  
23 story.”

24 - Birchall: “Would be ideal to  
25 have more than one publisher receive  
26 the info.”

27 - Howard: “100 %[,] Plan is to  
28



1 reach out indirectly to ¾ different  
2 newspapers & print & online. ... This  
3 will begin in 90 mins & then be  
4 pushed out today. The difficulties  
5 will be getting the editors to ok that  
6 line of enquiry & for them to feel this  
7 is a better story that [sic] the  
8 principles [sic] activities.”

9 - Howard: “Jim example of  
10 what we are doing with all the daily  
11 newspapers and Sunday papers”

12 - Birchall: “So nothing out yet  
13 has your info?”

14 - Howard: “Daily Mail are  
15 now interested through Mick Smith.  
16 Thats [sic] the paper that will have the  
17 biggest impact”

18 - Birchall: “Ok, good ...  
19 Please let me know when you have  
20 word of a story with your narrative  
21 being published. One other thought,  
22 maybe we consider the Australian  
23 press as well. The UK press may be  
24 prone to protect one of their own.”

25 • Birchall testified that Musk was  
26 likely involved in forming the information  
27 for planting in the UK and Australian  
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press, and that he and Musk authorized and encouraged Howard to plant those stories:

- The “we” in the above August 28, 2019, e-mail is Birchall and Musk.

- Birchall testified that “Yeah,” in response to being asked whether “you wanted that story to be published, and Mr. Musk wanted it to be published too. True?”

- Birchall stated “I believe so, yes,” in response to being asked whether “Mr. Musk wanted this information leaked to the UK press.”

- Birchall stated “Yes,” in response to being asked, “you said ‘We agree to it,’ and Mr. Musk said that ‘I agree to it being leaked,’ right?”

- Birchall testified “Yes,” in response to being asked that “you are saying [in the August 28 email to Howard above] that you and Mr. Musk did want these leaks to happen immediately, true?”

- In response to being asked

whether he was “[h]oping to get a story about Vernon Unsworth,” published, Birchall testified that “wherever the cards would fall in investigative work, gathering information – but yes, something that would be – would have people question the motive for being in Thailand” and that “pedophilia” “would be among the things that people would question ...”

- Birchall testified that there were “many people who seek to discredit him [Musk] ... and my instinct to protect was that we needed to somehow balance, because there was a clear imbalance in what was in the media.”

- Birchall testified “Yes” in response to being asked whether the “fact of the matter is you and Elon Musk wanted this information contained in Exhibit 66 and forwarded to the Sun as reflected on Exhibit 67, you and Mr. Musk wanted this information to be public; to be written about by the media, true?”

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- Birchall testified that it was “Likely” that “Mr. Musk would have known that you were suggesting the avenue of also publishing in Australia,” too.

- Birchall testified that it is “true” that the information planted in the press was intended to be made “without any disclosure that it was coming from Elon Musk or one of his investigators.”

(Wilson Decl. Exs, 25, 33; *id.* Ex. 2 (Birchall Dep. 109:18-110:6, 111:18-24, 114:23-115:21, 119:1-120:25, 125:13-126:3, 129:10-13, 163-64, 273:4-24).)

And rather than stating that they wanted the claims made through the investigator to the UK and Australian press to be investigated, Birchall stated that “it should be enough for a story.”

(Wilson Decl. Ex 33).

Third, despite claiming he wanted his statements investigated and that he gave them to the media prior to receiving a “final report” because “it could be literally a crime in progress,” Musk did not alert any member of law enforcement.

(Wilson Decl. Ex. 1 (Musk Dep. 192:2-19; 242:12-21).)

Fourth, both Musk and Mr. Mac agree that Musk did not seek an agreement that the information would be “off the record” prior to Musk’s accusatory e-mail on August 30, 2018.

(Wilson Decl. Ex. 1 (Musk Dep. 181:12-16), *id.* (Mac. Decl. ¶¶ 5-6); *see also id.* (Arnold Dep. 130:25-131:8, 143:15-17).)

Fifth, Dave Arnold, Tesla’s global communications director at the relevant time, confirmed that “[i]t was up to [BuzzFeed] if they want to publish” the email” that Musk unilaterally labeled off the record.

(Wilson Decl. Ex. 7 (Arnold Dep. 10:7-15, 102:5-14).)

Sixth, Arnold had no knowledge that “BuzzFeed and/or Ryan Mac had ever in the past respected a communication from Elon Musk that was unilaterally sent with an ‘off the record’ statement and there being no agreement by the reporter.”

(Wilson Decl. Ex. 7 (Arnold Dep. 100:16-101:2).)

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Seventh, Arnold confirmed that Musk: was “taking a chance” attempting to “unilateral[ly] dictate” that the email be off the record; “could . . . have been more careful and . . . asked in advance for . . . a formal agreement,” which is “**what [Arnold] would have done as a communications person**”; and has “a higher duty to . . . do what he can to ensure it’s not printed.”

(Wilson Decl. Ex. 7 (Arnold Dep. 103:6-24, 104:13-105:4, 119:19-120:11) (emphasis added).)

Eighth, Arnold confirmed that Musk failed to do the “prudent thing” and was “taking a risk” in unilaterally stating “off the record” when making a “heinous accusation” to Mac who has a history of being critical of Musk, particularly given that Musk decided to repeatedly insult Mac, who in return, was making reasonable requests. “Mr. Musk knows that when he says something, it is potentially news” and “therefore, Mr. Musk has to be careful both in what he says and who he says it to.” And under the circumstances, in which when Musk talks

“it’s news” and he has “to be careful,” and he is making “a heinous accusation” to a reporter “who has, within two months, produced an article profiling Mr. Musk and his companies in a way that is critical of all four,” the **“prudent thing to do”** would have been to first contact Mac and ask “can we have an off the record conversation.” Instead, Musk sent Mac a string of emails that were “demeaning” and “insulting” in response to Mac’s “reasonable request[s],” leading to the email stating “off the record” and then in the very next sentence calling Mac a “fucking asshole.” Arnold confirmed that “even if you’ve got some level of confidence that somebody’s, from a historical standpoint, going to keep your confidence, you’re pushing the line when you call them a fucking asshole in the first sentence,” and “[i]t makes it harder” “to keep the information unilaterally off the record,” and “increased the chances that Ryan Mac might publish that information.” Arnold confirmed that if he, himself, had sent the email **“[i]t’s hard to envision anybody reasonably expecting**

1 that a reporter who he has no established  
2 relationship of trust with is going to keep  
3 information confidential and off the record  
4 at his unilateral request when he starts off  
5 giving the information in the first sentence  
6 calling the reporter a fucking asshole . . . .”  
7 Arnold further confirmed that “when it  
8 comes from Elon Musk on a subject matter  
9 that has been out front as one of the most  
10 covered news events in recent weeks and  
11 months, the chances of that being news to  
12 be published are significantly higher than  
13 it’s just from the average Joe [sic] . . . .”

14 (Wilson Decl. Ex. 7 (Arnold Dep.  
15 111:17-112:3; 114:12-115:18, 116:4-16;  
16 116:19-117:3; 117:12-118:6, 120:16-  
17 121:2, 124:2-125:10, 126:1-127:6, 128:10-  
18 129:13, 129:20-130:1, 143:20-144:11); *id.*  
19 Ex. 19).)

20 Ninth, Arnold also acknowledge that  
21 the BuzzFeed editor, Ben Smith, with  
22 whom he spoke about the “off the record”  
23 issue disagreed with Arnold that Musk  
24 could unilaterally make the email “off the  
25 record.” Arnold spoke highly of Smith,  
26 whom he had known for ten years, with  
27 whom he personally had a good  
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1 2 3 4 5 6 7 8 9 10		relationship, and whom he believes to be “a solid journalist.” Smith conveyed that Arnold had “been doing this to long enough to know that you agree to the terms of a conversation in advance.” Smith was not swayed by Arnold’s attempts to argue otherwise.  (Wilson Decl. Ex. 7 (Arnold Dep. 53:4- 16; 144:22-145:4, 165:25-166:4, 168:11- 20, 168:24-169:6; <i>id.</i> Ex. 42).)
11 12 13 14 15 16 17 18	77. In his first email to Mr. Mac, Mr. Musk told him to “call people you know in Thailand, find out what’s actually going on.”  (Musk Decl. Ex. L.)	Undisputed, but not a material fact and incomplete. The e-mail speaks for itself, but Musk never stated in his correspondence to Mr. Mac that he did not know this information to be true but wanted it to be investigated.  (Musk Decl. Ex. L.; Wilson Decl. Ex. 33).
19 20 21 22 23 24 25 26 27 28	78. Mr. Musk wrote in the first email to Mr. Mac “stop defending child rapists.”  (Musk Decl. ¶ 44, Ex. L.)	<u>Evidentiary Objection</u>  Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).  <u>Response</u>  Undisputed that Musk wrote this. Disputed to the extent the statement is being submitted for the truth of the matter asserted therein. For the Court’s

	<p>convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact Nos. 56-61, 63-64, and 67, and 79.</p>
<p>79. Mr. Musk’s statement that Mr. Unsworth was a “child rapist” was based on information relayed to him by Mr. Birchall.</p> <p>(Musk Decl. ¶ 44; Lifrak Decl. Ex. 2 (Musk Dep. 176:4-24).)</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Disputed. As explained in further detail below, Birchall’s testimony during his deposition, as well as his email to Howard, was that he never told Musk that Unsworth was a “child rapist.” Additionally, Howard wrote to Birchall that “I do not know how anyone could come to that conclusion as neither of us have ever mentioned children or rape in our conversations. . . .”</p> <p>Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall’s possession proving negligence and actual malice in Unsworth’s Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 14-64.</p> <p>For the Court’s convenience, Unsworth</p>

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incorporates his citations of evidence and response to Defendant's Statement of Fact Nos. 56-61, 63-64, and 67, but he specifically affirms and supplements those responses as follows:

First, the accusation that Unsworth is a "child rapist" is categorically false.

(Wilson Decl. Ex. 3 (Unsworth Dep. 69:2-8, 70:3-4, 75:18-76:3); *id.* Ex. 20 (Unsworth Rog. No. 1); *id.* Ex. 5 (Tik Dep. 7:13-17, 10:5-25, 11:22-12:19, 32:4-15).)

Second, Birchall relayed to Musk, at most, conflicting information regarding how old Tik was when she **met** Unsworth, which included 12/13 years old, 18/19 years old, and 28 years old.

On August 24, 2018, Howard reported that Unsworth and Tik "have been married for 7 years, 28yrs gap between them both."

As of August 27, 2018, Howard stated as verified fact that Unsworth "met his wife in 2008 in her role as Vice President of the local commune" and as confirmed that Unsworth "is 63 years old. His wife we believe is 30 which would have put her at 18/19 when they first met."

1 In this regard nothing changed in  
2 Howard's written report on the morning of  
3 August 30, 2018, which stated that "His  
4 wife we believe is 30, (**we will confirm**  
5 **this in the next 48hrs**) which would have  
6 put her at 18/19 when they first met."  
7 (Emphasis in original).

8 (Wilson Decl. Exs. 21-24; *id.* Ex. 2  
9 (Birchall Dep. 99:3-100:7, 139:16-141:7,  
10 149:14-23, 224:22-226:5, 242:19-243:17,  
11 246:2-23, 248:23-264:2).)

12 More pointedly, although Musk  
13 testified that Birchall said Unsworth had a  
14 child bride, Birchall expressly contradicted  
15 Musk and never told him, or told him that  
16 Howard reported, that Unsworth was a  
17 child rapist:

18 • Q. So you're telling me that Mr.  
19 Howard told you they were married when  
20 she was how old?

21 • A. 18 or 19.

22 • Q. Not that they met when she was  
23 18 or 19, but that they were married when  
24 she was 18 or 19, true?

25 • A. That's correct. True.

26 \*\*\*

27 • Q. Nobody ever told him [Musk] –  
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not you, not Mr. Howard, nobody – that in fact Tik and Vernon were married when she was 12 years old, true?

- A. That is true.

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• Q. You didn't communicate to Elon Musk that Vernon Unsworth's a child rapist, right?

- A. That's right.

• Q. And you didn't communicate to Elon Musk that Mr. Howard said that Vernon was a child rapist, did you?

- A. No, I did not communicate that.

• Q. And you didn't communicate to Elon Musk that Vernon Unsworth married Tik when she was 12 years old, did you?

- A. No.

• Q. And Mr. Howard never communicated to you at any time, that in fact, Tik and Vernon were married when she was 12 years old, right?

- A. Correct.

(Wilson Decl. Ex. 2 (Birchall Dep. 242:19-243:17, 248:23-249:16); *compare id.* Ex. 1 (Musk Dep. 62:4-64:15, 198:11-23 (“The investigator who merely was, in retrospect, just taking us for a ride ...

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	<p>claimed that Unsworth had a 12-year-old bride. ... That is my recollection of what Jared told me, yes.”.)</p> <p>Musk also agreed that Birchall did not tell Mr. Musk that Unsworth was a child rapist:</p> <ul style="list-style-type: none"><li>• Q. Who told you that Mr. Unsworth was a child rapist? Did Jared tell you that?</li><li>• A. No. I didn’t say that he was. I think I said we need to find out if he is.</li><li>• Q. Why did you use the term “child rapist”? Who had used that term with you that made you repeat it in your email to Mr. Mac?</li><li>• A. Well, I think anyone who is – if somebody is sleeping with someone who is 12 years old, I would say that person is a child rapist.</li></ul> <p>(Wilson Decl. Ex. 1 (Musk Dep. 176:4-14).)</p>
<p>80. In his first email to Mr. Mac, Mr. Musk wrote that Mr. Unsworth had been “traveling to or living in Thailand for 30 to 40 years, mostly Pattaya Beach, until moving to Chiang Rai for a child bride that was about 12 years old at the time.”</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Musk wrote this.</p> <p>Disputed to the extent the statement is</p>

<p>(Musk Decl. ¶ 45, Ex. L.)</p>	<p>being submitted for the truth of the matter asserted therein. And, indeed, Unsworth denies that the alleged reports are true.</p>
<p>81. Mr. Musk’s statement that Mr. Unsworth had been “traveling to or living in Thailand for 30 to 40 years, mostly Pattaya Beach, until moving to Chiang Rai for a child bride that was about 12 years old at the time” was based on information relayed to him by Mr. Birchall.</p> <p>(Musk Decl. ¶ 45; Lifrak Decl. Ex. 2 (Musk Dep. 62:8-64:15).)</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802). Birchall’s alleged conversation with Howard about the contents of an article is not the required best evidence of said contents. (FRE 1002).</p> <p><u>Response</u></p> <p>Disputed. Birchall never communicated to Musk that Unsworth moved “to Chiang Rai for a child bride that was about 12 years old at the time” and never communicated to Musk that any information about Unsworth was confirmed. Also disputed to the extent the purported facts about Unsworth are being communicated for the truth of the matter asserted therein.</p> <p>Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall’s possession proving negligence and actual malice in Unsworth’s Statement of Additional</p>

Material Facts Precluding Summary  
Judgment at ¶¶ 14-64.

For the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact Nos. 56-61, 63-64, 67, and 79 but he specifically affirms and supplements those responses as follows:

First, as extensively set forth herein, none of these claims are true.

(Wilson Decl. Ex. 3 (Unsworth Dep. 69:2-8, 70:3-4, 75:18-76:3); *id.* Ex. 20 (Unsworth Rog Nos. 1, 13); *id.* Ex. 5 (Tik Dep. 7:13-17, 10:5-25, 11:22-12:19, 32:4-15).)

Second, having established above that Birchall never conveyed that Unsworth had a “child bride” in response to response to Statement of Fact No. 79, all written reports with respect to whether Unsworth spent time in Pattaya were expressly unverified and equivocal, and this was known to Musk and Birchall, and they were in fact still seeking any corroborative information after Musk’s accusations to BuzzFeed:

- Birchall acknowledged that he is



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unaware of receiving more than one  
written report regarding Unsworth and  
Pattaya Beach;

- Birchall acknowledged that the only  
information Musk could have received  
came directly from him;

- The sole written report on the issue  
stated, “Prior to meeting his current wife  
**we believe** that Mr Unsworth was living in  
the Pattaya Beach ... **We are in the  
process of verifying this information.**”  
(Emphasis added).

- The sole written report on the issue  
stated, “**If this is the case that Mr  
Unsworth chose to live in Pattaya Beach**  
before moving to Northern Thailand ...”  
(Emphasis added).

- The sole written report on the issue  
stated, “**Can we confirm** that Mr  
Unsworth was a frequent visitor to Pattaya  
– **This can be established** by checking old  
visa applications that he would have made  
on entering Thailand.” (Emphasis added).

- Birchall acknowledged that when  
the August 30, 2018, report was sent,  
Howard “did state that they were in the  
process of verifying that,” i.e., the travel of

Unsworth;

• Birchall acknowledged that “there had been no confirmation as a matter of fact that Unsworth lived in Pattaya Beach,” stating that “it definitely questions the veracity of that. Though his – the conversations you had with him much more affirmative. [sic].”

• Birchall acknowledged that Howard had “[n]ot unequivocally” “prior to August 30th, ... stated ... ‘We know that Vernon Unsworth lived in Pattaya Beach most of the time that he visited Thailand.’”

• Birchall acknowledged that “[t]here were inconsistencies” regarding Howard’s “portrayal of Unsworth’s activity in Pattaya Beach and other activities ...”

• Even as of September 3, 2018, Howard wrote to Birchall: “Jim I have deployed 3x investigators to Pattaya ... My plan is to wait for the Pattaya evidence then package it up for the x2 journalist in Australia & x 2 in the UK ... **Pattaya will take some time probably 7 days** ... Can you authorise a further 20k USD? This is to cover the UK surveillance and Pattaya investigation.”

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- As of September 4, 2018, Birchall demonstrated his awareness that Unsworth's (false) travel to Pattaya was unverified and that any specific conduct remained unknown, stating "Can you confirm the hotel names in Pattaya? And you said 2 of them are considered standard destinations for expats with bad intentions, correct?"

- Howard responded that "our goal is to get evidence from the penthouse which is obviously a big win. I'll keep you updated."

- Birchall acknowledged during his deposition that as of "early September" records about "hotel stays in Pattaya and all that stuff ... didn't materialize ..."

- Birchall acknowledged that as of August 30, it was "[t]rue that Howard had "not stated as a matter of fact that Vernon Unsworth ever lived in Pattaya Beach," while insisting that "there are numerous phones calls between each of these [written] correspondence where he is much more affirmative in his beliefs of her age and of Unsworth's activities and of his time spent in Pattaya Beach."

	<ul style="list-style-type: none"> <li>• Birchall acknowledged that it was not until September 4, 2018, that Howard claimed to have “contacts in the British Embassy that had ... travel records for Mr. Unsworth having frequented” certain alleged hotels in Pattaya.</li> </ul> <p>(Wilson Decl. Ex. 2 (Birchall Dep. 136:6-21, 169:1-170:22, 176:12-177:1, 177:19-181:23, 183:4-190:24, 201:13-202:1); <i>id.</i> Ex. 23; <i>id.</i> Ex. 25).)</p> <p>Finally, although Musk testified that Birchall relayed Howard’s purported statement that Unsworth had a child bride (although Birchall expressly denied and refuted that claim), Musk stops short of stating that in his sworn declaration and instead vaguely states it “was based on Mr. Birchall’s summary of the investigator’s findings.”</p>
<p>82. Mr. Musk also wrote in his first email to Mr. Mac on August 30, 2018 that “there’s only one reason people go to Pattaya Beach. It isn’t where you go for caves, but it is where you’d go for something else.”</p> <p>(Musk Decl. ¶ 46, Ex. L.)</p>	<p>Undisputed that Musk wrote this in his email to Mr. Mac. Disputed to the extent that it is being offered for the truth of the matter asserted or that it has any relevance to the issues before the Court.</p> <p>Additionally, Musk received in a written report dated September 1 – prior to the publication of the BuzzFeed article on</p>

	<p>September 4 – a report from Howard that specifically indicated that there are “extensive local cave networks” in Chiang Rai, which is why Unsworth was there, and that “Chiang Rai has plenty of interesting caves.”</p> <p>(Wilson Decl. Ex. 26).</p>
<p>83. Mr. Musk’s statement that “there’s only one reason people go to Pattaya Beach. It isn’t where you go for caves, but it is where you’d go for something else” was based on information relayed to him by Mr. Birchall.</p> <p>(Musk Decl. ¶ 46; Lifrak Decl. Ex. 2 (Musk Dep. 62:8-64:15).)</p>	<p>Disputed, but not a material fact.</p> <p>For the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact Nos. 60, 64, and 81 with regard to the falsity, and lack of verification from Howard, of Unsworth’s alleged travel to Pattaya; response to Defendant’s Statement of Fact No. 56 with regard to Birchall’s relaying of this information to Musk; and Defendant’s Statement of Fact No. 82 with respect to this area of Thailand.</p>
<p>84. Mr. Musk also wrote “Chiang Rai is renowned for child sex-trafficking.”</p> <p>(Musk Decl. ¶ 47, Ex. L.)</p>	<p>Undisputed that Musk wrote this to Mr. Mac. Disputed to the extent that it is being offered for the truth of the matter asserted or that it has any relevance to the issues before this Court.</p> <p>For the Court’s convenience, Unsworth incorporates his citations of evidence and</p>

1		response to Defendant's Statement of Fact
2		No. 82 with respect to this area of
3		Thailand.
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5	85. Mr. Musk's statement was	Undisputed that Musk included a
6	supported by and consistent with a	citation in his email to Mr. Mac. Disputed
7	Google search that he also provided	to the extent that it is being offered for the
8	in the email.	truth of the matter asserted or that it has
9	(Musk Decl. ¶ 47, Ex. L.)	any relevance to the issues before this
10		Court.
11		Musk's Google search included the
12		terms "Chiang Rai" and "child trafficking"
13		and therefore he received search results
14		related to sex trafficking in Chiang Rai –
15		just as a Google search of "Los Angeles"
16		and "child trafficking" provides search
17		results related to child sex trafficking in
18		Los Angeles, which is considered a "hub"
19		for such activity. <i>See, e.g.,</i>
20		<a href="http://lahumantrafficking.com/about-human-trafficking/">http://lahumantrafficking.com/about-</a>
21		<a href="http://lahumantrafficking.com/about-human-trafficking/">human-trafficking/</a> (last visited Oct. 6,
22		2019).
23		Indeed, a Google search for "Chiang
24		Rai" without adding "child trafficking"
25		reveals that it is a popular tourist
26		destination, highly recommended by well-
27		known tourist websites such as
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	<p>TripAdvisor, which says that “Chiang Rai is a community not to be missed” because of its “cooking classes, beautiful views, markets, resorts and restaurants” and for its “true northern Thai culture.” See <a href="https://www.tripadvisor.com/Tourism-g297920-Chiang_Rai_Chiang_Rai_Province-Vacations.html">https://www.tripadvisor.com/Tourism-g297920-Chiang_Rai_Chiang_Rai_Province-Vacations.html</a> (last visited Oct. 6, 2019).</p>
<p>86. Mr. Musk also wrote that “most of the actual dive team refused to hang out with [Mr. Unsworth].”  (Musk Decl. ¶ 48, Ex. L.)</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Musk wrote this. Disputed to the extent the statement is being submitted for the truth of the matter asserted therein. And, indeed, Unsworth denies that the alleged reports are true.  (Wilson Decl. Ex. 10 (Harper Decl. ¶ 8); <i>id.</i> Ex. 11 (Ellis Decl. ¶¶ 9, 12); <i>id.</i> Ex. 12 (Stanton Decl. ¶¶ 5, 8); <i>id.</i> Ex. 13 (Svasti Decl. ¶¶ 4-5).)</p>
<p>87. Mr. Musk’s statement that “most of the actual dive team refused to hang out with [Mr. Unsworth]” was consistent with</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p>

1 and based on information relayed to  
2 him by Mr. Birchall and his  
3 employee.

4 (Musk Decl. ¶ 48.)  
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Response

Undisputed that Musk wrote this statement. Disputed to the extent the statement is being submitted for the truth of the matter asserted therein. And, indeed, Unsworth denies that the alleged reports are true. Disputed that Musk did not make this up out of whole cloth.

Further disputed because this statement conflicts with Musk's and Harris's sworn testimony on the issue. For Musk:

- A. I had heard from some of the SpaceX engineers that he – that they had talked to somebody who had said that he had – they – his name didn't come up. And he was not – you know, they either hadn't – didn't know who he was, or if they did know who he was, they said they didn't want him there. That was my recollection.

- Q. If they didn't know who he was, they did not want him there?

- A. Some people didn't know who he was, and the others didn't want him there.

- Q. Who were these people? First, who were the SpaceX employees that



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reported that to you?

- A. I believe it was a conversation with Armor Harris.

- Q. Anybody else besides Mr. Harris?

- A. I think I asked a couple people. I'm not sure who else.

- Q. Mr. Harris, though, was somebody you definitely know said that to you?

- A. I believe – that's my recollection.

(Wilson Decl. Ex.1 (Musk Dep. 248:2-22).)

Armor Harris denied ever telling this to Musk in his deposition:

- Q. So did you ever talk to Mr. Musk about Vernon Unsworth?

- A. No.

- Q. No communication with him at all about Vernon?

- A. No.

- Q. Did he ever – he never asked you for information about Vernon Unsworth?

- A. No.

- Q. He never asked you if you had

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	<p>heard whether he was kicked off the rescue or asked to leave?</p> <ul style="list-style-type: none"> <li>• A. No. Not from Elon.</li> <li>• Q. Did anybody ever asked you on his behalf what you knew about Vernon?</li> <li>• A. No. Well –</li> <li>• Q. I mean, besides the litigation, obviously. This is all binding you up in that.</li> <li>• A. Yeah.</li> <li>• Q. Did you say anything about “Oh, I think he got kicked off the rescue or asked to leave” or anything like that?</li> <li>• A. No.</li> </ul> <p>(Wilson Decl. Ex. 9 (Harris Dep. 153:13-155:16).)</p>
<p>88. Mr. Musk did not know or believe that any statements in his first email to Mr. Mac were false; nor did he entertain any serious doubts as to their truth.</p> <p>(Musk Decl. ¶ 49.)</p>	<p>Disputed.</p> <p>Musk’s first email to Mr. Mac stated only “Have you actually done any research at all? For example, you incorrectly state that he is a diver, which shows that you know essentially nothing and have not even bothered to research basic facts.”</p> <p>(Wilson Decl. Ex. 19).</p> <p>To the extent this fact is intended to refer to Musk’s August 30, 2018, “child rapist” and “child bride” e-mail, disputed.</p>

Unsworth more comprehensively and sequentially addresses the information in Musk and Birchall's possession proving negligence and actual malice in Unsworth's Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 14-64.

For the Court's convenience, Unsworth incorporates his citations of evidence and response to Defendant's Statement of Fact Nos. 56-61, 63-64, 67, 79, and 81, but Unsworth specifically supplements those fulsome responses with the following.

Musk testified that he did not know at the time of his "child rapist" and "child bride" e-mail whether the information was true or false:

- Q. Why did you want the information that you sent to Mr. Mac to be off the record?

- A. Because I was not sure that it was accurate. ...

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- Q. So but at the time you wrote this information to Mr. Mac, you tell me you didn't know whether it was true or not, right?

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	<ul style="list-style-type: none"> <li>• A. Yes. I specifically said try to find out if this is true. I had been told directly that there were very suspicious situations, that there was – I had been told by Jared that this investigator had said that – that it looked quite bad, and that, you know, what he is up to in Thailand sounded pretty bad, so it seems like, if you are a journalist and you care about doing the right thing, you should go ahead and find out if it’s true, and if it is, then take action.</li> <li>• Q. But sir, the point is, you didn’t know whether the investigator’s information was true or not or had been verified, right? Isn’t that right?</li> <li>• A. That’s right. That’s why I said “Please go and investigate.” (Wilson Decl. Ex. 1 (Musk Dep. 173:23-175:16).)</li> </ul>
<p>89. Mr. Musk’s second email to Mr. Mac on August 30, 2018 stated “On background” at the top of the message. (Musk Decl. ¶ 50, Ex. M.)</p>	<p>Undisputed that Musk sent an e-mail labeled “on background” but it was not his second e-mail, and not a material fact. Disputed that the notation for “on background” demonstrated any intent by Musk that the information in his email should not be republished.</p>

<p>1 90. Mr. Musk wrote in the 2 second email to Mr. Mac on August 3 30, 2018 that he “[n]ever saw Mr. 4 Unsworth at any point. Was told he 5 was banned from the site.” 6 (Musk ¶ 51, Ex. M.) 7 8 9 10 11 12 13 14 15</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Musk wrote this statement. Disputed to the extent the statement is being submitted for the truth of the matter asserted therein. And, indeed, Unsworth denies that the alleged reports are true.</p> <p>(Wilson Decl. Ex. 10 (Harper Decl. ¶ 8); <i>id.</i> Ex. 11 (Ellis Decl. ¶¶ 9, 12); <i>id.</i> Ex. 12 (Stanton Decl. ¶¶ 5, 8); <i>id.</i> Ex. 13 (Svasti Decl. ¶¶ 4-5).)</p>
<p>16 91. Mr. Musk’s statement that he 17 “[n]ever saw Mr. Unsworth at any 18 point. Was told he was banned 19 from the site” was consistent with 20 his own observations and based on 21 information told to him by an 22 employee of one of his companies. 23 (Lifrak Decl. Ex. 2 (Musk Dep. 24 247:24-248:16); Musk Decl. ¶ 51.) 25 26 27 28</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Musk wrote this statement. Disputed to the extent the statement is being submitted for the truth of the matter asserted therein. And, indeed, Unsworth denies that the alleged reports are true. Further disputed as to what Musk was told by an employee, who expressly</p>

	<p>denied this occurred, and not a material fact. Disputed that Musk did not make this up out of whole cloth.</p> <p>For the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact No. 87.</p>
<p>92. Mr. Musk did not know or believe that the statement that he “[n]ever saw Mr. Unsworth at any point. Was told he was banned from the site” was false; nor did he entertain any serious doubts as to its truth.</p> <p>(Musk Decl. ¶ 52.)</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter asserted therein. (FRE 802).</p> <p><u>Response</u></p> <p>Undisputed that Musk wrote this statement.</p> <p>Disputed to the extent the statement is being submitted for the truth of the matter asserted therein. And, indeed, Unsworth denies that the alleged reports are true. Disputed that Musk did not make this up out of whole cloth.</p> <p>For the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact No. 87.</p>
<p>93. Mr. Musk sent the information that he learned through Mr. Birchall and Mr. Howard to</p>	<p><u>Evidentiary Objection</u></p> <p>Hearsay to the extent the statement is being submitted for the truth of the matter</p>

BuzzFeed so that BuzzFeed could conduct its own investigation into Mr. Unsworth to corroborate the information.

(Lifrak Decl. Ex. 2 (Musk Dep. 173:23-175:11); Musk Decl. ¶ 53.)

asserted therein. (FRE 802). Birchall's alleged conversation with Howard about the contents of an article is not the required best evidence of said contents. (FRE 1002).

Response

Undisputed that Musk sent information to Mr. Mac. Disputed that Musk sent any information he received from Birchall or Howard or even advised Mr. Mac that was his basis. Disputed that this information was learned through Birchall and Howard, including because the information that Musk sent included allegations that Unsworth was a child rapist who married a 12-year-old child bride, which was never communicated to Musk, as discussed in Unsworth's response to Defendant's Statement of Fact Nos. 56-61 and 63-64, which is incorporated herein for the Court's convenience. Disputed that Musk sent the information to BuzzFeed "so that" BuzzFeed could conduct its own investigation because the evidence is that Musk wanted those statements about Unsworth published.

Further disputed to the extent that

	<p>Musk seeks an inference that if he wanted an investigation, he did not want, intend, encourage, authorize, or foresee that his e-mails or their contents would be republished. In this regard, for the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact Nos. 75-76.</p> <p>Responding further, Unsworth more comprehensively and sequentially addresses Musk’s authorization, encouragement, and intention, as well as the foreseeability, that Mr. Mac would publish his e-mails or their contents in Unsworth’s Statement of Additional Material Facts Precluding Summary Judgment at ¶¶ 65-84.</p>
<p>94. On September 4, 2018, Mr. Mac responded to Mr. Musk’s August 30, 2018 emails. (Musk Decl. ¶ 54, Ex. L.)</p>	<p>Undisputed.</p>
<p>95. In his first email to Mr. Musk on September 4, 2018, Mr. Mac stated, among other things, that he “didn’t agree for the conversation to be off the record” and he “tried to report out some of the</p>	<p>Undisputed.</p>



1 accusations on [his] own but have  
2 not found anything to corroborate  
3 the claims.”

4 (*Id.*)

5 96. On September 4, 2018, Mr.  
6 Musk responded in an email to Mr.  
7 Mac that “We haven’t had a  
8 conversation at all. I sent you an off  
9 the record email, which very  
10 clearly and unambiguously said,  
11 ‘off the record.’ If you want to  
12 publish off the record comments  
13 and destroy your journalistic  
14 credibility, that’s up to you. As for  
15 answering more questions, I would  
16 be happy to do so, but not with  
17 someone who just told me that they  
18 will not honor accepted rules of  
19 journalism.”

20 (Musk Decl. ¶ 55, Ex. L.)  
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Undisputed that Musk made these  
statements in the email. Disputed to the  
extent Musk is asserting his unilateral  
designation of “off the record” indeed  
made the email off the record, or  
otherwise established that he did not want,  
intend, encourage, authorize, or reasonably  
foresee that his e-mails or their contents  
would be republished.

In this regard, Unsworth more fully  
addresses Musk’s authorization,  
encouragement, and intention, as well as  
the foreseeability, that Mr. Mac would  
publish his e-mails or their contents in  
Unsworth’s Statement of Additional  
Material Facts Precluding Summary  
Judgment at ¶¶ 65-84.

Responding further, for the Court’s  
convenience, Unsworth incorporates his  
citations of evidence and response to  
Defendant’s Statement of Fact Nos. 75-76,  
but specifically supplements those fulsome  
responses as follows:

1 First, Musk's influence is such that  
2 what he says and does is news, as  
3 demonstrated by the reporting surrounding  
4 his tube and his false accusations in this  
5 case *prior to* the August 30, 2018,  
6 BuzzFeed e-mails.

7 (Wilson Decl. Ex. 1 (Musk Dep. 320:4-  
8 321:19, 85:2-9 ("I mean, it's a torrent of  
9 media. And I don't know. The media, to  
10 be very frank, is – especially over the last  
11 few years, has caused me to lose some  
12 faith in humanity. Not good."); *id.* Ex. 2  
13 (Birchall Dep. 120:5-12 ("Yeah, I mean, in  
14 general you have someone who has  
15 disrupted many industries, and [who] as a  
16 result has many people who seek to  
17 discredit him, and therefore any data point,  
18 good or bad, is blown extremely out of  
19 proportion in the media ..."); *id.* Ex. 7  
20 (Arnold Dep. 116:19-117:3; 117:12-118:6)  
21 (It is "true" that "the chances of that being  
22 news to be published are significantly  
23 higher than it's just [sic] from the average  
24 joe or Dave Arnold or Lin Wood").)

25 Second, Musk was responding to a  
26 reporter's request for comment with  
27 explosive accusations against an  
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individual who was vital in saving thirteen lives in what had become a topic of worldwide interest, and from a reporter and news outlet who had already covered this story with several articles.

(Wilson Decl. Ex. 19; *id.* Exs. 37-40).

Third, Musk was responding to a reporter who had only two months earlier written a scathing article regarding Musk, with whom he had no prior relationship or knowledge, and with a media outlet for whom he had no respect.

(Wilson Decl. Ex. 1 (Musk Dep. 167:5-169:25 (Musk did not know anything about Mr. Mac other than “[t]here was the email correspondence, obviously. Apart from that, no,” and does “[n]ot particularly” “have a great deal of journalistic respect for BuzzFeed”); *id.* Ex. 35 (Mac Decl. ¶ 6).)

Fourth, Musk’s first sentence to Mr. Mac called him a “fucking asshole.” This insult and the other insults in Musk’s emails to Mr. Mac made it more likely that Mr. Mac would publish the emails notwithstanding Musk’s unilateral designation of “off the record.”

	<p>(Wilson Decl. Ex. 19; <i>id.</i> Ex. 7 (Arnold Dep. 116:19-117:3; 117:12-118:6).)</p> <p>Fifth, when told by Mr. Mac that his unilaterally designated “off the record” e-mail was not, in fact, off the record, Musk told Mr. Mac “If you want to publish off the record comments and destroy your journalistic credibility, that’s up to you,” without ever clarifying that he did not know the truth or falsity of his accusations or providing the information on which his claims were based.</p> <p>(Wilson Decl. Ex.19).</p>
<p>97.Mr. Mac’s suggestion that that a positive confirmation from a reporter is required before a communication can be deemed off the record is “not consistent” with Mr. Musk’s prior numerous off-the-record interactions with reporters in the past.</p> <p>(Lifrak Decl. Ex. 2 (Musk Dep. 171:2-172:16); Musk Decl. ¶ 56-57.)</p>	<p>Not a material fact and disputed to the extent that Musk seeks an inference that his unilateral designation of “off the record” establishes that he did not want, intend, encourage, authorize, or reasonably foresee that his e-mails or their contents would be republished.</p> <p>Responding further, for the Court’s convenience, Unsworth incorporates his citations of evidence and response to Defendant’s Statement of Fact Nos. 75-76, and 96.</p>
<p>98.Mr. Musk believed and</p>	<p>Not a material fact and disputed to the</p>

1 understood, based on numerous off-  
2 the-record interactions with  
3 reporters in the past, that by  
4 designating his emails to Mr. Mac  
5 as “off the record” or “on  
6 background” their contents would  
7 not be published.

8 (Musk Decl. ¶ 56.)  
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extent that Musk seeks an inference that  
his unilateral designation of “off the  
record” establishes that he did not want,  
intend, encourage, authorize, or reasonably  
foresee that his e-mails or their contents  
would be republished – particularly  
because there is evidence that Musk did  
want the information contained in his  
emails republished.

Responding further, for the Court’s  
convenience, Unsworth incorporates his  
citations of evidence and response to  
Defendant’s Statement of Fact Nos. 75-76,  
and 96-97.

15 99. On July 15, 2018, Mr.  
16 Unsworth forwarded an email  
17 between himself and Richard  
18 Stanton to a BBC reporter. The first  
19 line of Mr. Unsworth’s email to the  
20 BBC reporter stated “[f]or your  
21 eyes only and not to be reported  
22 on!!!” In deposition, Mr. Unsworth  
23 agreed that by including this  
24 language he was “telling [the BBC  
25 reporter] that he was not to include  
26 this information in a story.”

27 (Lifrak Decl. Ex. 2 (Unsworth  
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Undisputed, but not a material fact.

As set forth in Unsworth’s citations of  
evidence and response to Defendant’s  
Statement of Fact Nos. 75-76, and 97, this  
has no bearing on the issue before the  
Court: whether Musk intended,  
authorized, encouraged, or reasonably  
foresaw that his e-mails or their contents  
would be published.

Dep. 78:13-79:19); Ex. 23.)	
<p>100. The BuzzFeed News Standards and Ethics Guide in effect on August 30, 2018 and September 4, 2018 did not require that a reporter and source reach an agreement before information is treated as “off-the-record.”</p> <p>(Lifrak Decl. Ex. 24.)</p>	<p>Not a material fact and disputed to the extent that Musk seeks an inference that his unilateral designation of “off the record” establishes that he did not want, intend, encourage, authorize, or reasonably foresee that his e-mails or their contents would be republished.</p> <p>This policy also does not permit a source to unilaterally designate comments off the record, and there is no evidence that Musk had any knowledge of this policy.</p> <p>(Lifrak Decl. Ex. 24.)</p>
<p>101. In November 2018, two months after Mr. Musk exchanged emails with Mr. Mac, BuzzFeed updated the BuzzFeed News Standards and Ethics Guide to add the following language to its section on anonymous sources:</p> <p>“Interviews are always on the record until a reporter agrees to go off the record or on background.”</p> <p>This policy did not exist at the time that Mr. Musk exchanged emails with Mr. Mac.</p>	<p>Undisputed, but not a material fact.</p>

(Lifrak Decl. Ex. 25.)	
<p>102. BuzzFeed’s Standards and Ethics Guide in effect on August 30, 2018 and September 4, 2018 stated: “Information — excluding common knowledge — should come from a verified source.”</p> <p>(Lifrak Decl. Ex. 24.)</p>	<p>Not a material fact and disputed to the extent that Musk seeks an inference that his unilateral designation of “off the record” establishes that he did not want, intend, encourage, authorize, or reasonably foresee that his e-mails or their contents would be republished.</p> <p>This section of BuzzFeed’s Standards and Ethics Guide speaks to the use of such websites as “Wikipedia, IMDb, and other websites that anyone can edit” versus “[a]cceptable verified sources,” which “<b>include interviews</b>, legal documents, research by experts, academic journals, databases, and, with attribution, stories from trusted news organizations.” (Emphasis added).</p> <p>(Lifrak Decl. Ex. 24.)</p> <p>Further, there is no evidence that Musk had any knowledge of this policy.</p>
<p>103. On September 4, 2018, BuzzFeed published a story that reprinted Mr. Musk’s off-the-record and on background emails in their entirety.</p> <p>(Compl., Ex. K; Lifrak Decl. Ex.</p>	<p>Undisputed that BuzzFeed published a story on September 4, 2018, that republished Musk’s emails to Mr. Mac; disputed that those emails were properly considered “off-the-record” or “on background” based only on a unilateral</p>

1 2 3 4 5 6 7 8 9	26.)	<p>designation by Musk, because those designations require an agreement with the reporter to be binding.</p> <p>Responding further, for the Court's convenience, Unsworth incorporates his citations of evidence and response to Defendant's Statement of Fact Nos. 75-76, 96-97, and 100-102.</p>
10 11 12 13 14	<p>104. On September 17, 2018, Mr. Unsworth filed the instant action in this Court.</p> <p><i>(See generally, Compl.)</i></p>	Undisputed.
<b>H. <u>Mr. Unsworth Sues</u></b>		
15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>105. Mr. Unsworth's September 17, 2018 Complaint – the operative pleading in this case – lists the following exhibits to the Complaint as the “false and defamatory accusations” published by Mr. Musk: “Exhibits B [first July 15 tweet], C [second July 15 tweet], D [third July 15 tweet], E [fourth July 15 tweet], F [July 18 apology tweet], G [July 18 apology tweet], I [July 28 tweet], and K [BuzzFeed September 4 article].”</p>	<p>Disputed to the extent Musk seeks an inference that Unsworth did not expressly plead Musk's e-mails to Mr. Mac as an independent cause of action, separate and apart from the increased damages caused by BuzzFeed's authorized, intended, encouraged, and reasonably foreseeable republication of Musk's e-mails and/or their contents. Even on an issue as simple as this, Musk cannot help but fail to notify the Court that he is not setting forth the critical part of the operative paragraph at issue by use of ellipses (or otherwise).</p>



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(Compl. ¶ 113.)	<p>Unsworth expressly sued Musk <i>for his publications</i>, as well as for all damages arising from his publications and from republications of <i>his publications</i>.</p> <p>Compl. ¶¶ 88 (setting forth Musk’s defamatory e-mail to BuzzFeed), 113 (“<b><i>Musk’s publications</i></b> in Exhibits B, C, D, E, F, G, I, and K, <b><i>as referenced in paragraphs ... 88</i></b> of this Complaint, are hereinafter referred to as the “False and Defamatory Accusations.”). (Emphasis added).</p>
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Dated: October 7, 2019

**L. LIN WOOD, P.C.**

By: /s/L. Lin Wood

L. Lin Wood

Attorneys for Plaintiff

VERNON UNSWORTH